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Supreme Court, U.S.

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No. 93-397

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

ASSOCIATED INDUSTRIES OF MISSOURI and ALUMAX FOILS, INC.,
Petitioners,

vs.

JANETTE M. LOHMAN, Director of Revenue, and
DELONG'S, INCORPORATED, THE CITY OF BLUE SPRINGS,
GARY MARKENSON, THE MISSOURI ASSOCIATION OF COUNTIES,
THE MISSOURI MUNICIPAL LEAGUE, and
THE ASSOCIATED GENERAL CONTRACTORS OF MISSOURI,
Respondents.

On Writ of Certiorari to the Supreme Court of Missouri

JOINT APPENDIX

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(Continued on inside front cover)

Petition for Certiorari Filed September 10, 1993
Certiorari Granted December 6, 1993

St. Louis Law Printing, Inc. 13307 Manchester Rd. St. Louis, MO 63131 314-231-4477

(Continued from front cover)

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CIRCUIT COURT OF COLE COUNTY

Case No.: CV192-0015CC

Relevant Docket Entries

01/06/92	Petition for Declaratory Judgment and Injunction
02/07/92	Defendant's Answer
05/18/92	DeLong's Inc. et al Motion to Intervene (w/Answer of Intervenor-Defendants attached)
05/22/92	Plaintiffs' Motion For Summary Judgment and Suggestions in Support Thereof
05/22/92	Plaintiffs' Notice of Hearing on Motion For Summary Judgment
05/22/92	Affidavits of Kenneth D. Ramsey and Curtis M. Long
06/03/92	Plaintiffs' Suggestions in Opposition to Motion to Intervene
06/04/92	DeLong's, Inc., et al's First Amended Motion to Intervene
06/05/92	Affidavit of Ed Robb
06/05/92	Affidavit of William Johnson
06/05/92	Affidavit of F. Joe DeLong
06/12/92	Defendant's Suggestions in Opposition to Plaintiffs' Motion For Summary Judgment
06/18/92	Affidavit of Raymond L. Hanley
06/19/92	Reply to Defendant's Suggestions in Opposition to Plaintiffs Motion for Summary Judgment

06/19/92	Depositions of Beth Harris; Edward Robb, Ph.D.; and Raymond McCarty taken on behalf of Plaintiffs
06/23/92	First Amended Motion to Intervene of DeLong, Inc., et al. sustained.
	First Amemded Answer deemed filed; Plaintiffs' Motion for Summary Judgment taken with the case
07/15/92	Plaintiffs' Motion for Summary Judgment overruled: provisions of Section 144.748 do not violate provisions of Section 9 of the 14th amendment, nor the provisions of Section 2 or 10 or Article I or X or IV of the Mo. Constitution. Plaintiffs denied relief on petition, both declaratory and injunctive. Costs taxed to plaintiffs. (c/Judgment)
08/04/92	Plaintiff's Notice of Appeal to the Supreme Court of Mo.

SUPREME COURT OF MISSOURI

Case No. 75089

Relevant Docket Entries

08-04-92	APPEAL FILED IN CIRCUIT COURT
08-05-92	APPEAL FILED IN SUPREME COURT OF MISSOURI
08-05-92	NOTICE OF APPEAL FILED WITH JURISDICTIONAL STATEMENT W/SER. (FILED IN CIRCUIT COURT: AUGUST 4, 1992.)
10-26-92	RECORD ON APPEAL TRANSFERRED BY JUAN D. KELLER
	(RECORD: 2 VOLS. LEGAL FILES, 1 VOL. TRANSCRIPT.)
10-27-92	SUPPL. LEGAL FILE FILED BY LV. OF CT. (1 VOL.) RECORD COMPLETE
11-04-92	APPELLANTS BRIEF BY JUAN D. KELLER
12-04-92	CASE DOCKETED FOR 02-03-93
12-22-92	RESPONDENTS BRIEF BY CURTIS FRANK THOMPSON
01-07-93	INTVS.-RESPS.' (DELONG'S INC., ET AL.) BRIEF FILED.
01-26-93	APPELLANT'S REPLY BRIEF BY JUAN D. KELLER
02-03-93	ARGUED AND SUBMITTED
02-03-93	BENTON, J., NOT SITTING; AHRENS, SP. J., SITTING.

06-29-93	AFFIRMED SIGNED MAJORITY OPINION BY WILLIAM RAY PRICE JR.
06-29-93	CO,HO,TH,LI,JJ., & AHRENS, SP.J, CONCUR; RO, C.J, DISSENTS IN SEP
06-29-93	OPINION FILED.
07-15-93	MANDATE SENT

IN THE CIRCUIT COURT OF
COLE COUNTY, MISSOURI

Cause No. CV 192-15CC

ASSOCIATED INDUSTRIES OF MISSOURI and
ALUMAX FOILS, INC.,
Plaintiffs,

v.

RAYMOND T. WAGNER, JR.,
DIRECTOR OF REVENUE, STATE OF MISSOURI,
Defendant.

PETITION FOR DECLARATORY JUDGMENT AND INJUNCTION

[Filed: Jan. 6, 1992]

COMES NOW Plaintiffs, Associated Industries of Missouri ("AIM") and Alumax Foils, Inc. ("Alumax"), and for their Petition for declaratory judgment and injunction state as follows:

COUNT I

(Declaratory Judgment)

1. Jurisdiction of this Count [*sic*] is founded upon §§527.010 and 527.020, RSMo. (1986) (as amended), and venue is in this Court under §508.010(1).[1]

2. Plaintiff AIM is a Missouri not-for-profit corporation which operates as a "business league" within the meaning of §501(c)(6) of the Internal Revenue Code of 1986, the membership of which consists of persons, firms, partnerships, and corporations engaged in business or industry in Missouri. Sev-

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[1] All citations herein are to the Missouri Revised Statutes of 1986, as amended, unless otherwise indicated.

eral of AIM's members are multistate corporations whose principal operations and headquarters are located outside Missouri. AIM's principal purpose is to promote a business-oriented philosophy and to represent the interests of its members in the Missouri General Assembly and agencies and instrumentalities of the State. AIM was organized to secure cooperation among the industrial and commercial interests in the State of Missouri in all matters national and local affecting their welfare and the welfare of the people of Missouri. AIM's members pay Missouri sales and use taxes, as applicable, on purchases of tangible personal property made within and without this State. Several of AIM's members also collect and remit Missouri use tax on sales of tangible personal property made outside Missouri to purchasers located within this State. AIM brings this action on behalf of and as representative for its members who have standing to bring this suit in their own right.

3. Plaintiff Alumax is a Delaware corporation with its corporate headquarters at 6100 South Broadway, St. Louis, Missouri 63111. Alumax is engaged primarily in the business of manufacturing and selling foil products both within and without Missouri. In connection with its business operations, Alumax purchases tangible personal property from vendors located both within and without Missouri and pays Missouri sales and use taxes, as applicable, on such purchases. Currently Alumax pays approximately $3,000 per month in Missouri use taxes. Alumax is a member of AIM and is authorized to do business in the State of Missouri.

4. Defendant Raymond T. Wagner, Jr. is the duly appointed and qualified Director of Revenue of Missouri within the meaning of Art. IV, §22 of the Missouri Constitution. This action is brought against Defendant in his official capacity and not individually.

5. S.C.S.H.C.S.H.B. 25 (hereinafter "H.B. 25"), enacted by the General Assembly and signed by the Governor in 1991, *inter*

alia, amended §144.747, RSMo. Supp. 1990, to impose a new and additional use tax ("local use tax") of one and one-half percent (1-1/2%) on all transactions subject to tax under §§144.600 to 144.745, RSMo. ("state use tax"). Voter approval of the local use tax was not required. Section C of H.B. 25 requires (1) AIM's members and Alumax to collect or pay, as appropriate, and (2) Defendant to collect, the local use tax effective July 1, 1992, as an additional tax on all transactions subject to the state use tax.

6. Defendant must perform all functions incident to the administration, collection, enforcement and operation of the local use tax. The said local use tax collected, less one percent, plus earnings thereon is required to be deposited in a "Local Use Tax Fund" and paid therefrom by Defendant, without appropriation by the General Assembly, to political subdivisions based on formulae set out in §144.747.3 - .10.

7. Certain Missouri cities and counties do not impose local sales tax. Accordingly, as of July 1, 1992, the local use tax, combined with the use tax imposed by §§144.600 to 144.745, will be imposed at a greater rate and will be greater in amount on sales in these cities and counties by or to AIM's members or Alumax subject to said taxes than will be the state and local sales taxes imposed pursuant to §§144.010 to 144.510 ("state sales tax"), 66.600 to 66.635, 67.500 to 67.545, 92.400 to 92.420, 94.500 to 94.570, 94.600 to 94.655, and 94.700 to 94.745 ("local sales taxes") on sales made in cities and counties in Missouri which impose no local sales taxes or which impose local sales taxes at rates less than 1-1/2%. Some examples of locales that impose local sales taxes at rates less than 1-1/2% are Dexter in Stoddard County; Nevada in Vernon County; Clifton Hill in Randolph County; New Cambria in Macon County; Napoleon in Lafayette County; Bixby and Glover, both in Iron County; Brandsville in Howell County; Stanberry in Gentry County; Kennett and Malden, both in Dunklin County; Winston in Daviess County; Gordonville in Cape Girardeau County; Murray

in Callaway County; Fort Worth, Monett and Springdale in Barry County; and Farber in Audrain County.

8. Accordingly, compliance with H.B. 25 will impose significant economic costs upon AIM's members and Alumax, which such costs will consist, *inter alia*, of the payment of the tax and the administrative costs of compliance. In addition, AIM's members who purchase items outside Missouri for storage, use or consumption in Missouri, or who sell items outside Missouri for purchasers' storage, use or consumption in Missouri, and Alumax will be competitively disadvantaged in relation to companies that purchase items in Missouri counties and cities that have no local sales tax or local sales taxes at rates less than 1-1/2%. The local use tax will discourage the flow of out-of-state goods into Missouri, thereby raising the cost to AIM's members and Alumax of doing business in Missouri.

9. The actions of the State of Missouri in imposing state and local use taxes at a combined rate of 5.725% when the state sales taxes on certain other identical sales in Missouri will be at rates from 4.225% to 5.725% are unlawful and violate the Equal Protection, Due Process and Uniformity Clauses of the Missouri Constitution, Art. I, §§2 and 10, and Art. X, §3, respectively, the Equal Protection and Due Process Clauses of the Fourteenth Amendment of the United States Constitution, and the Interstate Commerce Clause of Article I, §8 of the United States Constitution, and the rights of AIM's members and Alumax thereunder.

10. The actions of the State of Missouri in imposing and distributing the local use tax as required by H.B. 25 are unlawful and violate Art. X, §§1 and 10(a) of the Missouri Constitution, and the rights of AIM's members and Alumax thereunder.

11. The actions of the State of Missouri in imposing and distributing the local use tax as required by H.B. 25 without the enactment of appropriations legislation violate Art. IV, §28 of the Missouri Constitution, and the rights of AIM's members and Alumax thereunder.

12. The actions of the State of Missouri in imposing and distributing the local use tax as required by H.B. 25 are unlawful and void and violate Art. X, §§16 and 22 of the Missouri Constitution, and the rights of AIM's members and Alumax thereunder.

13. AIM's members and Alumax will suffer injury and irreparable harm if the local use tax is imposed by the State and collected and distributed by Defendant in the manner set forth in H.B. 25.

14. A justiciable controversy exists between AIM and Alumax and Defendant as to the validity of the local use tax imposed by H.B. 25.

WHEREFORE, Plaintiffs pray that this Court:

A. Declare that H.B. 25 violates the Equal Protection, Due Process and Uniformity Clauses of the Missouri Constitution, Art. I, §§2 and 10, and Art. X, §3, respectively, the Equal Protection and Due Process Clauses of the Fourteenth Amendment of the United States Constitution, and the Interstate Commerce Clause, Art. I, §8 of the United States Constitution, and the rights of AIM's members and Alumax thereunder.

B. Declare that H.B. 25 violates Art. X, §§1 and 10(a) of the Missouri Constitution, and the rights of AIM's members and Alumax thereunder.

C. Declare that H.B. 25 violates Art. IV, §28 of the Missouri Constitution, and the rights of AIM's members and Alumax thereunder.

D. Declare that H.B. 25 violates Art. X, §§16 and 22 of the Missouri Constitution, and the rights of AIM's members and Alumax thereunder.

E. Award Plaintiffs their reasonable attorney's fees and costs as provided in Art. X, §23 of the Missouri Constitution.

F. Grant such further relief as the Court deems just and proper.

COUNT II

(Injunction)

15. Jurisdiction of this Count is founded on §526.010 and venue is in this Court under §526.090.

16. Plaintiffs reallege and incorporate by reference paragraphs 2 through 14 of Count I as if fully set forth herein.

17. Unless Defendant is enjoined from collecting the use tax imposed by H.B. 25, AIM's members and Alumax will suffer irreparable injury and will have no full, adequate and complete remedy at law.

18. If AIM's members or Alumax refuse to collect or to pay the use tax imposed by H.B. 25, on information and belief, AIM and Alumax state that AIM's members and Alumax would be subject to audit by the Department of Revenue which by law would be required to assess such tax. AIM's members and Alumax would then be subject to liability for significant penalties and interest.

19. If, in the alternative, AIM's members and Alumax collected and paid the use tax imposed by H.B. 25, they would subsequently have to file refund claims for such taxes in order to contest the validity of the tax. No provision of Missouri law, however, allows AIM's members or Alumax to recover their costs in complying with the law or challenging the law.

WHEREFORE, Plaintiffs pray that this Court:

A. Issue an injunction prohibiting Defendant from enforcing the local use tax provisions of H.B. 25.

B. Grant such other relief as this Court may deem just and proper.

Respectfully submitted,

BRYAN, CAVE, McPHEETERS & McROBERTS

By: /s/ Juan D. Keller
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IN THE
CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

[Caption omitted in printing]

ANSWER

[Filed: Feb. 07, 1992]

Comes now the defendant, Raymond T. Wagner, Jr., Director of Revenue of the State of Missouri, and for his answer to plaintiffs' Petition for Declaratory Judgment and Injunction states as follows:

Count I

1. Defendant admits that venue is in this court under § 508.010, RSMo. Defendant admits that if plaintiffs have standing to sue and if they have alleged a cause of action for declaratory judgment, then jurisdiction would be properly founded upon §§ 527.010 and 527.020, RSMo.

2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of plaintiffs' petition, and therefore denies the same.

3. In response to Paragraph 3 of plaintiffs' petition, defendant admits that Alumax Foils, Inc., a foreign corporation, has paid Missouri sales tax and Missouri use tax, and has in the past paid $3,000.00 or more per month of Missouri use tax. Defendant is without knowledge or information sufficient to form a belief as to each and every other allegation contained in Paragraph 3 and therefore denies the same.

4. Defendant admits the allegations contained in Paragraph 4 of plaintiffs' petition.

5. In response to Paragraph 5 of plaintiffs' petition, defendant states that H.B. 25, now § 144.748, RSMo Supp. 1991, effective

July 2, 1992, speaks for itself. Defendant is without knowledge or information sufficient to form a belief as to the truth of plaintiffs' allegation that said law requires the members of Associated Industries of Missouri and Alumax Foils, Inc., to collect or pay tax.

6. In response to Paragraph 6 of plaintiffs' petition, defendant states that H.B. 25, now § 144.748, RSMo Supp. 1991, effective July 2, 1992, speaks for itself.

7. In response to Paragraph 7 of plaintiffs' petition, defendant admits that: (1) certain Missouri cities and counties do not impose local sales tax, (2) that the following locales impose local sales tax at rates less than 1 1/2 percent: Dexter in Stoddard County; Clifton Hill in Randolph County; New Cambria in Macon County; Napoleon in Lafayette County; Bixby and Glover, both in Iron County; Brandsville in Howell County; Stanberry in Gentry County; Kennett and Malden, both in Dunklin County; Winston in Daviess County; Gordonville in Cape Girardeau County; Monett in Barry County; and Farber in Audrain County. Defendant denies each and every other allegation contained in Paragraph 7 of plaintiffs' petition.

8. In response to Paragraph 8 of plaintiffs' petition, defendant states that he is without knowledge or information sufficient to form a belief as to the truth of plaintiffs' allegation that compliance with H.B. 25 will impose significant economic costs on the plaintiffs, and therefore, defendant denies the same. Defendant denies each and every other allegation contained in Paragraph 8 of plaintiffs' petition.

9 Defendant denies each and every allegation contained in Paragraph 9 of plaintiffs' petition.

10. Defendant denies each and every allegation contained in Paragraph 10 of plaintiffs' petition.

11. Defendant denies each and every allegation contained in Paragraph 11 of plaintiffs' petition.

12. Defendant denies each and every allegation contained in Paragraph 12 of plaintiffs' petition.

13. Defendant denies each and every allegation contained in Paragraph 13 of plaintiffs' petition.

14. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of plaintiffs' petition, and therefore denies the same.

15. Defendant denies each and every allegation contained in Count I of plaintiff's petition, not specifically admitted herein.

WHEREFORE, defendant prays that this court deny plaintiffs' request for declaratory relief, declare that H.B. 25 does not violate the constitutional provisions enumerated in plaintiffs' petition, assess all costs herein against the plaintiffs, deny plaintiffs' request for attorney's fees, and grant such other relief as may be proper.

Count II

16. In response to Paragraph 15 of plaintiffs' petition, defendant admits that if plaintiffs have alleged a cause of action for an injunction, then jurisdiction and venue would be properly founded upon §§ 526.010 and 526.090, RSMo.

17. In response to Paragraph 16 of plaintiffs' petition, defendant incorporates his answer to Paragraphs 2 through 14 of Count I of plaintiffs' petition as if fully set forth herein.

18. Defendant denies each and every allegation contained in Paragraph 17 of plaintiffs' petition.

19. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in

Paragraph 18 of plaintiffs' petition and therefore denies the same.

20. Defendant denies each and every allegation contained in Paragraph 19 of plaintiffs' petition.

21. Defendant denies each and every allegation contained in Count II of plaintiff's petition, not specifically admitted herein.

22. Further answering, defendant states that plaintiffs have failed to state a claim for which injunctive relief can be granted.

WHEREFORE, defendant prays that this court deny plaintiffs' request for injunctive relief, assess all costs against the plaintiffs, and grant such other relief as may be proper.

Respectfully submitted,

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Attorney General

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ATTORNEYS FOR RESPONDENT

[Certificate of Service omitted in printing]

IN THE CIRCUIT COURT
OF COLE COUNTY, MISSOURI

[Caption omitted in printing]

FIRST AMENDED MOTION TO INTERVENE

[Filed: June 04, 1992]

Comes now DeLong's, Incorporated, the City of Blue Springs, Gary Markenson, the Missouri Association of Counties, the Missouri Municipal League, and the Associated General Contractors of Missouri, by their attorneys, and state to the Court as follows:

1. DeLong's, Incorporated ("DeLong's"), is a Missouri corporation with its principal place of business in Jefferson City, Cole County, Missouri. DeLong's is engaged in the steel business in Jefferson City, and sells its steel products in Missouri and also out of state. DeLong's is a Missouri taxpayer and pays state and local taxes. DeLong's collects state and local sales taxes upon its products which it sells within Missouri. The business in which DeLong's is engaged is a highly competitive business, and it is at a competitive disadvantage when out of state steel manufacturers sell their products in Missouri without the necessity of having to collect or pay local use taxes or a substitute therefore. DeLong's therefore has an interest in the issues raised in this litigation and seeks to intervene in this action because its burdens as a taxpayer will be more and because of the competitive disadvantage that it would be at if the Plaintiffs are successful.

2. The City of Blue Springs ("Blue Springs") is a municipality located in Jackson County, Missouri. Local sales taxes have been adopted by the City of Blue Springs pursuant to authorization by state law with respect to sales occurring within Blue Springs. Upon H.B. 25 becoming effective Blue Springs will receive substantial tax funds from the use tax for local purposes

provided for in H.B. 25. If the Plaintiffs are successful with their Petition, Blue Springs will therefore lose tax revenues and accordingly be harmed and damaged.

3. Gary Markenson ("Markenson") is a citizen and resident of Jefferson City, Cole County, Missouri. He is also a payer of sales taxes and other taxes to the City of Jefferson, the County of Cole and the State of Missouri. If the plaintiffs are successful with respect to their Petition, less tax revenues will be paid to the City of Jefferson and to the County of Cole with the consequent result that as a taxpaying citizen and resident in those jurisdictions he will have to pay a greater amount of taxes if said jurisdictions are to provide the same level of services and consequently he will be harmed and damaged. Markenson makes purchases in Jefferson City which are subject to sales tax in Missouri. If Plaintiffs are successful with their Petition, those purchases made by him in intrastate commerce within Jefferson City will be subjected to greater tax burdens than purchases made by others in interstate commerce coming into Jefferson City and he will be consequently harmed and damaged.

4. The Missouri Association of Counties (the "Association of Counties") is a Missouri not-for-profit corporation which is an association representing the interests of the counties of this state. Its members consists of Missouri counties. The Association of Counties seeks to intervene in this action on behalf of and as representative for its member counties who have standing to intervene in this case in their own right. The counties which the Missouri Association of Counties represent would lose tax revenues if the Plaintiffs would be successful with their Petition and be accordingly harmed and damaged.

5. The Missouri Municipal League (the "Municipal League") is a benevolent corporation formed pursuant to the laws of the state of Missouri. Its members are Missouri municipalities. The Municipal League seeks to intervene in this action on behalf of and as representative for its member municipalities who have

standing to intervene in this action in their own right. If the Plaintiffs are successful with their Petition, the member municipalities of the Municipal League will lose tax revenues and be accordingly harmed and damaged.

6. The Associated General Contractors of Missouri ("AGC") is a benevolent corporation formed pursuant to the laws of the state of Missouri. The AGC was organized to secure cooperation among contractors and other similar business interests in the state of Missouri in matters affecting their welfare and the welfare of the people of Missouri. The members of the AGC pay Missouri state and local taxes in Missouri, including sales and use taxes, as applicable, on purchases of tangible personal property made within and without the state. Several of the members of the AGC also collect and remit state and local sales taxes on sales of tangible personal property made in Missouri to purchasers located within the state. With respect to the sales of tangible personal property within the state upon which the members of the AGC are required to collect and remit local sales taxes, they are at a competitive disadvantage to those entities outside of the state if Plaintiffs would prevail in this action. The AGC seeks to intervene in this action on behalf of and as representative for its members who have standing to intervene herein because their burdens as taxpayers will be more and because of the competitive disadvantage that they will be at if the Plaintiffs are successful.

7. DeLong's, Blue Springs, Markenson, the Association of Counties, the Municipal League, and the AGC are entitled to intervene in this action as a matter of right under Rule 52.12(a), Missouri Rules of Civil Procedure, or alternatively, they should be allowed to intervene under Rule 52.12(b), Missouri Rules of Civil Procedure. These proposed intervenors state that they have interests relating to the subject matter of this action and that they are so situated that the disposition of the action may as a practical matter impair or impede their ability to protect those interests.

Proposed intervenors state that their interests are separate and distinct from those of the defendant, and that they should be permitted to intervene herein in order to assert that H.B. 25 to which reference is made in the Petition is not unconstitutional as alleged by the Plaintiffs in their Petition.

8. Attached hereto is a "First Amended Answer of Intervenor-Defendants" which the movants for intervention request that the Court, upon permitting them to intervene, allow and order to be filed.

9. Confirming earlier oral notice to counsel for the Plaintiffs, notice is hereby given that this First Amended Motion for Intervention will be called for hearing on June 5, 1992, before the Circuit Court of Cole County at 11:00 a.m., or as soon thereafter as counsel may be heard.

WHEREFORE, DeLong's, Incorporated, the City of Blue Springs, Gary Markenson, the Missouri Association of Counties, the Missouri Municipal League, and the Associated General Contractors of Missouri move that they be permitted to intervene herein and to file the First Amended Answer of Intervenor-Defendants which is attached hereto.

HUSCH & EPPENBERGER

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[Certificate of Service omitted in printing]

IN THE CIRCUIT COURT
OF COLE COUNTY, MISSOURI

Case No. CV192-15CC

ASSOCIATED INDUSTRIES OF MISSOURI and
ALUMAX FOILS, INC.,
Plaintiffs,

v.

DIRECTOR OF REVENUE,
Defendant,

and

DELONG'S, INCORPORATED,
CITY OF BLUE SPRINGS, GARY MARKENSON,
MISSOURI ASSOCIATION OF COUNTIES,
MISSOURI MUNICIPAL LEAGUE, and
ASSOCIATED GENERAL CONTRACTORS
OF MISSOURI,
Intervenor-Defendants.

FIRST AMENDED ANSWER OF INTERVENOR-DEFENDANTS

Come now the Intervenor-Defendants, DeLong's, Incorporated, the City of Blue Springs, Gary Markenson, the Missouri Association of Counties, the Missouri Municipal League, and the Associated General Contractors of Missouri, by their attorneys, and for their answer to plaintiffs' Petition for Declaratory Judgment and Injunction state as follows:

GENERAL ALLEGATIONS

1. Intervenor-Defendant DeLong's, Incorporated ("DeLong's"), is a Missouri corporation with its principal place of business in Jefferson City, Cole County, Missouri. DeLong's is engaged in the steel business in Jefferson City, and sells its

steel products in Missouri and also out of state. DeLong's is a Missouri taxpayer and pays state and local taxes including state and local sales taxes. DeLong's collects state and local sales taxes upon its products which it sells in intrastate commerce within Missouri. DeLong's collect use taxes of other states on certain products which it sells out of state in interstate commerce and pays use taxes in Missouri in [*sic*] certain products which it purchases from out of state. The business in which DeLong's is engaged is a highly competitive business, and DeLong's is at a competitive disadvantage when out of state steel manufacturers sell their products in interstate commerce from outside Missouri to within Missouri without the necessity of having to collect or pay use taxes for local purposes in Missouri or a substitute therefore. With respect to sales which are made by DeLong's within Jefferson City, such sales are subjected to local sales taxes approved and put into effect by Jefferson City (1% for regular purposes and .5% for transportation purposes) and Cole County (.5% for capital improvement purposes) for a combined local sales tax rate of 2%. Said 2% local sales tax rate exceeds the use tax rate of 1.5% for local purposes provided for in H.B. 25 referred to in the Petition. DeLong's therefore has an interest in the issues raised in this litigation, has standing herein, and intervenes in this action because its burdens as a Missouri taxpayer will be more if H.B. 25 is declared unconstitutional and because of the competitive disadvantage that it would be at if the Plaintiffs are successful.

2. The City of Blue Springs ("Blue Springs") is a municipality located in Jackson County, Missouri. Local sales taxes have been approved and put into effect by Blue Springs pursuant to authorization by state law with respect to sales occurring within Blue Springs. Blue Springs has approved and put into effect a 1% sales tax for regular purposes and a .5% sales tax for transportation purposes, for a total rate of 1.5%. In addition, Jackson County has approved and put into effect for sales in Jackson County, including sales in Blue Springs, a .5% sales tax for

regular purposes and a .25% sales tax for general purposes, for a total tax rate of .75%. Consequently, sales made within Blue Springs are subject to a combined local sales tax rate of 2.25%. Said 2.25% local sales tax rate exceeds the use tax rate of 1.5% provided for in H.B. 25 referred to in the Petition. If the Plaintiffs are successful with their Petition, Blue Springs will lose tax revenues and accordingly be harmed and damaged. Blue Springs therefore has a legal interest in the issues raised herein and standing to participate in this action.

3. Gary Markenson ("Markenson") is a citizen and resident of Jefferson City, Cole County, Missouri. He is also a payer of sales taxes and other taxes to the City of Jefferson, the County of Cole and the State of Missouri. Markenson purchases articles in Jefferson City in intrastate commerce which are subject to local sales taxes, as described in paragraph l, above, at a tax rate of 2%. Purchases made by others in Jefferson City who make purchases from out-of-state in interstate commerce which are shipped into Jefferson City and which are subject to state use taxes are not now subject to any use tax for local purposes and will after July l, 1992, only be subject to an additional 1.5% use tax for local purposes. H.B. 25 will reduce the tax burdens on sales in intrastate commerce which now exist as compared to those tax burdens on sales in interstate commerce. If, however, Plaintiffs are successful with their Petition, those purchases made by him in intrastate commerce within Jefferson City will be subjected to much greater tax burdens than purchases made by others in interstate commerce coming into Jefferson City and he will be consequently harmed and damaged. Markenson therefore has a legal interest in the issues raised herein and standing to participate in this action.

4. Intervenor-Defendant Missouri Association of Counties (the "Association of Counties") is a Missouri not-for-profit corporation which is an association representing the interests of the counties of this state. Its members consists of Missouri

counties. The Association of Counties intervenes in this action on behalf of and as representative for its member counties who have standing to intervene in this case in their own right. The Missouri counties which the Association of Counties represent would lose tax revenues if the Plaintiffs would be successful with their petition and be accordingly harmed and damaged. The Association of Counties therefore has legal interests on behalf of its member counties in the issues raised herein and has standing to participate herein on behalf of its member counties.

5. Intervenor-Defendant Missouri Municipal League (the "Municipal League") is a benevolent corporation formed pursuant to the laws of the state of Missouri. Its members are Missouri municipalities. The Municipal League intervenes in this action on behalf of and as representative for its member municipalities who have standing to intervene in this action in their own right. If the Plaintiffs are successful with their petition, the member municipalities of the Municipal League will lose tax revenues and be accordingly harmed and damaged. The Municipal League therefore has legal interests on behalf of its member municipalities in the issues raised herein and has standing to participate herein on behalf of its member municipalities.

6. Intervenor-Defendant Associated General Contractors of Missouri (the "AGC") is a benevolent corporation formed pursuant to the laws of the state of Missouri. The AGC was organized to secure cooperation among contractors and other similar business interests in the state of Missouri in matters affecting their welfare and the welfare of the people of Missouri. The members of the AGC pay Missouri state and local taxes in Missouri, including sales and use taxes, as applicable, on purchases of tangible personal property made within and without the state. Many members of the AGC also collect and remit state and local sales taxes on sales of tangible personal property made in Missouri to purchasers located within the state. With respect to intrastate sales of tangible personal property within the state

upon which the members of the AGC are required to collect and remit local sales taxes, they are at a competitive disadvantage to those entities outside of the state making interstate sales into Missouri if Plaintiffs would prevail in this action. The AGC intervenes in this action on behalf of and as representative for its members who have standing to intervene herein because their burdens as taxpayers will be more and because of the competitive disadvantage that they will be at if the Plaintiffs are successful. The AGC therefore has legal interests on behalf of its members in the issues raised herein and has standing to participate herein on behalf of its members.

7. Intervenor-Defendants are proper parties to this action under Rule 52.12(a) or 52.12(b) Missouri Rules of Civil Procedure. Intervenor-Defendants state that they have interests relating to the subject matter of this action and that they are so situated that the disposition of the action may as a practical matter impair or impede their ability to protect those interests. Intervenor-Defendants state that their interests are separate and distinct from those of the Defendant, and that they are proper intervenors herein in order to assert that H.B. 25 to which reference is made in the Petition is not unconstitutional as alleged by the Plaintiffs in their Petition.

FIRST AMENDED ANSWER TO COUNT I

For their First Amended Answer to Count I, Intervenor-Defendants states:

8. Intervenor-Defendants incorporate by reference the allegations of paragraphs 1 through 7 above.

9. With respect to Paragraph 1 of Plaintiff's Petition, Intervenor-Defendants admit that venue is in this Court under § 508.010, RSMo. Intervenor-Defendants admit that if Plaintiffs have standing to sue and if they have alleged a cause of action or [*sic*] declaratory judgment, then jurisdiction would be properly founded upon §§ 527.010 and 527.020, RSMo.

10. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of Plaintiffs' Petition, and therefore deny the same. Intervenor-Defendants specifically deny that AIM has standing to maintain this action.

11. In response to Paragraph 3 of Plaintiffs' Petition Intervenor-Defendants admit that Alumax Foils, Inc., has its corporate headquarters in the City of St. Louis is Missouri. Intervenor-Defendants state that in the City of St. Louis where the corporate headquarters of Alumax Foils, Inc., is located and the only place in Missouri with which it alleges a connection, the local sales tax rate is 1.5%. Intervenor-Defendants therefore specifically deny that Alumax Foils, Inc., would be subject to payment of the use tax for local purposes at a rate higher than the local sales tax rate for sales at its place of business. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to each and every other allegation contained in Paragraph 3 and therefore deny the same. Intervenor-Defendants specifically deny that Alumax Foils, Inc., has a [*sic*] standing to maintain this action.

12. Intervenor-Defendants admit the allegations contained in Paragraph 4 of Plaintiffs' Petition.

13. In response to Paragraph 5 of Plaintiffs' Petition, Intervenor-Defendants state that H.B. 25, now § 144.748, RSMo Supp. 1991, effective July 2, 1992, speaks for itself and they therefore deny any characterizations by the Plaintiffs of the provisions of said enactment. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegation that said law requires the members of Associated Industries of Missouri and Alumax Foils, Inc., to collect or pay tax and therefore deny that allegation. Intervenor-Defendants specifically deny that AIM and Alumax Foils, Inc., have such interests and are so situated as to have standing to raise the issues which they attempt to assert herein.

14. In response to Paragraph 6 of Plaintiffs' Petition, Intervenor-Defendants state that H.B. 25, now § 144.748, RSMo Supp. 1991, effective July 2, 1992, speaks for itself and they therefore deny any characterizations by the Plaintiffs of the provisions of said enactment.

15. In response to Paragraph 7 of Plaintiffs' Petition, Intervenor-Defendants admit and state (a) that a very limited number of small Missouri municipalities and only two Missouri counties (Reynolds and Dunklin) have not authorized local sales taxes; (b) that the following locales have authorized local sales tax at rates less than 1 1/2 percent --Dexter (1.375%, population 7,559) in Stoddard County (but in Stoddard County the rates at Advance, Bell City, Bernie, Dudley and Puxico are 1.5%), Clifton Hill (.5%, population 108) in Randolph County (but in Randolph County the rates at Moberly, Huntsville and Higbee are 2.0%), New Cambria (1%, population 233) in Macon County (but in Macon County the rates at Macon, Atlanta, Bevier and LaPlata are 2%), Napolean (.5%, population 233) in Lafayette County (but in Lafayette County the rates at Lexington, Higginsville, Concordia and Corder are 2% and the rates at Bates City, Odessa and Waverly are 1.5%), Bixby and Glover (5% [*sic*] , neither are incorporated and no population figures are shown in the *Missouri Official Manual*) in Iron County (but in Iron County the rates at Ironton an [*sic*] Pilot Knob are 2% and the rates at Viburnum, Arcadia and Annapolis are 1.5%), Brandsville (.5%, population 167) in Howell County (but in Howell County the rates at West Plains and Mountain View are 2% and the rate at Willow Springs is 1.5%), Stanberry (.5%, population 1,310) in Gentry County (but in Gentry County the rate at Albany is 1.5%), Kennett (.875%, population 10,941) and Malden (1%, population 5,123) in Dunklin County, Winston (1%, population 251) in Daviess County (but in Daviess County the rate at Gallatin is 1.875% and the rates at Jamesport and Pattonsburg are 2%), Gordonville (.5%, population 345) in Cape Girardeau County (but in Cape Girardeau County the rate at Jackson is 2%, the rate

at Cape Girardeau is 1.75% and the rate at Delta is 1%), Monett (1.375%, population 6,529) in Barry County (but in Barry County the rate at Washburn is 2.5%, the rate at Cassville is 2%, and the rates at Exeter, Purdy and Seligman are 1.5%), and Farber (1%, population 418) in Audrain County (but in Audrain County the rate at Mexico is 2.5%, and the tax rates at Martinsburg, Vandalia and Vandiver are 2%); (c) that the combined local sales taxes which are imposed with respect to all but a small percentage of sales in Missouri are equal to or in excess of the rate of 1 1/2 percent; (d) that local sales taxes are now authorized by Section 94.510 (sales tax by municipalities of 1/2 or 7/8 of 1% or 1%, except City of St. Louis limited to 1 3/8%), Section 94.577 (additional sales tax by municipalities [except those located in St. Louis County] for capital improvements of 1/8, 1/4, 3/8 or 1/2 of 1%), Section 94.600 (additional sales tax for transportation purposes in the City of St. Louis, Kansas City or St. Louis County of up to 1/2 of 1%), Section 94.700 (additional sales tax for transportation purposes by municipalities of over 200 population of up to 1/2 of 1%), Section 66.600 (county sales tax for St. Louis County of 1%), Section 67.391 (additional sales tax for anti-drug purposes for Jackson County and certain other counties of 1/4 of 1%), Section 67.505 (county sales tax of 1/4, 3/8 or 1/2 of 1%), Section 67.547 (additional county sales tax of 1/4, 3/8 or 1/2 of 1%), Section 67.550 (additional sales tax for St. Charles and Jefferson Counties of 1/2 of 1%), Section 67.581 (additional sales tax for St. Louis County [divided with municipalities] of up to 275/1000 of 1%), Section 67.582 (additional sales tax for certain first class counties for law enforcement purposes of 1/4, 3/8 or 1/2 of 1%), Section 67.583 (additional sales tax for St. Francois County for county employees benefits of 1/8 of 1%), Section 67.590 (additional sales tax for Buchanan County for construction of law enforcement facilities of 3/8 of 1%), Section 67.700 (additional sales tax for any county capital improvements of 1/4, 3/8 or 1/2 of 1%), Section 67.729 (additional sales tax for counties of the first class [except St. Louis County] for storm water control and public works [shared with

municipalities in county] of 1/10 of 1%), Sections 67.730 and 67.734 (additional sales tax for Jackson County for capital improvements of 1/4, 3/8 or 1/2 of 1%) and Section 67.782 (additional sales tax for Bollinger and Cape Girardeau Counties for recreational purposes of 1%); (e) that many local sales taxes have been approved by municipalities and counties and put into effect and that as a result of the various local sales taxes most sales in Missouri are in fact taxed at or in excess of the rate of 1 1/2 per cent; (f) that once such local sales taxes are adopted there are very few instances in which the total local sales tax for the locale have been reduced; (g) that the application of a uniform 1 1/2 percent tax rate to all sales in Missouri which are subject to sales taxes results in a far *lesser* amount of total sales taxes than the total amount of local sales taxes generated by the actual application of the various local sales tax rates applicable to those sales; and (g) that even with the use tax authorized by H.B. 25 there is a lesser tax burden on sales which are subject to the use tax for local purposes provided in H.B. 25 than there is upon the sales in Missouri which are subject to local sales taxes. Intervenor-Defendants deny each and every other allegation contained in Paragraph 7 of Plaintiffs' Petition not herein specifically admitted.

16. In response to Paragraph 8 of Plaintiffs' Petition, Intervenor-Defendants state that they are without knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegation that compliance with H.B. 25 will impose significant economic costs on the plaintiffs, and therefore, Intervenor-Defendants deny the same. Intervenor-Defendants state that they [*sic*] administrative costs of compliance by vendors with a uniform use tax of 1 1/2 per cent on a statewide basis are much less than the administrative costs of compliance by vendors with the various and varying local sales taxes. Intervenor-Defendants deny each and every other allegation contained in Paragraph 8 of Plaintiffs' Petition not herein admitted.

17. Intervenor-Defendants deny each and every allegation contained in Paragraph 9 of Plaintiffs' Petition.

18. For further answer to Paragraph 9, and in the event the Court rules that any part of H.B. 25 is unconstitutional because of a particular "identical sale in Missouri" may be subjected to less than a combined tax rate of 5.725%, in the alternative the Intervenor-Defendants state that instead of declaring H.B. 25 unconstitutional the court should limit its order (a) to determining (i) that the amount of the use tax that can be permissibly imposed on particular sales subject to use tax be limited to the amount of sales tax which can be imposed upon particular "identical sales in Missouri", (ii) that in all other respects the provisions of H.B. 25 be upheld, and (iii) that the determination as to whether or not a particular sale subject to the use tax for local purposes should be so taxed at a lesser rate should be left for determination through established administrative or tax refund procedures, or (b) to otherwise decree or sever so as to uphold the constitutional portions of H.B. 25.

19. Intervenor-Defendants deny each and every allegation contained in Paragraph 10 of Plaintiffs' Petition.

20. Intervenor-Defendants deny each and every allegation contained in Paragraph 11 of Plaintiffs' Petition.

21. Intervenor-Defendants deny each and every allegation contained in Paragraph 12 of Plaintiffs' Petition.

22. Intervenor-Defendants deny each and every allegation contained in Paragraph 13 of Plaintiffs' Petition.

23. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of Plaintiffs' Petition, and therefore deny the same.

24. Intervenor-Defendants deny each and every allegation contained in Count I of Plaintiffs' Petition, not specifically admitted herein.

25. For further answer, Intervenor-Defendants state that any tax burden upon interstate commerce by reason of the use tax authorized by H.B. 25 is less than the tax burdens on intrastate commerce imposed by local sales taxes authorized by state law and placed into effect by counties and municipalities in Missouri.

WHEREFORE, Intervenor-Defendants pray that this Court deny Plaintiffs' request for declaratory relief, declare that H.B. 25 does not violate the constitutional provisions enumerated in Plaintiffs' Petition, alternatively construe H.B. 25 in such a manner so as to uphold the application of the use tax for local purposes to the extent that it is not unconstitutional, assess all costs herein against the Plaintiffs, deny Plaintiffs' request for attorney's fees, and grant such other relief as may be proper.

FIRST AMENDED ANSWER TO COUNT II

For their First Amended Answer to Count II, Intervenor Defendants state:

26 . In response to Paragraph 15 of Plaintiffs' Petition, Intervenor-Defendants admit that if Plaintiffs have alleged a cause of action for an injunction, then jurisdiction and venue would be properly founded upon §§ 526.010 and 526.090, RSMo.

27. In response to Paragraph 16 of Plaintiffs' Petition, Intervenor-Defendants incorporate their answer to Paragraphs 2 through 14 of Count I of Plaintiffs' Petition contained in Paragraphs 1 thru 25 above as if fully set forth herein.

28. Intervenor-Defendants deny each and every allegation contained in Paragraph 17 of Plaintiffs' Petition. For further Answer Intervenor-Defendants affirmatively state that there are administrative and tax refund provisions contained in the laws of Missouri which provide a full and adequate remedy at law.

29. Intervenor-Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations

contained in Paragraph 18 of Plaintiffs; Petition and therefore deny the same.

30. Intervenor-Defendants deny each and every allegation contained in Paragraph 19 of Plaintiffs' Petition.

31. Intervenor-Defendants deny each and every allegation contained in Count II of Plaintiffs' Petition, not specifically admitted herein.

32. Further answering, Intervenor-Defendants state that Plaintiffs have failed to state a claim for which injunctive relief can be granted.

WHEREFORE, Intervenor-Defendants pray that this Court deny Plaintiffs' request for injunctive relief, assess all costs against the Plaintiffs, and grant such other relief as may be proper.

HUSCH & EPPENBERGER

/s/ Alex Bartlett
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Attorneys for DeLong's, Incorporated, the City of Blue Springs, Gary Markenson, the Missouri Association of Counties, the Missouri Municipal League, and the Associated General Contractors of Missouri

[Certificate of Service omitted in printing]

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

[Caption omitted in printing]

STIPULATION OF FACTS

[Filed: June 24, 1992]

COME NOW, Associated Industries of Missouri and Alumax Foils, Inc. ("Plaintiffs") and Raymond T. Wagner, Jr., Director of Revenue, State of Missouri ("Defendant"), by counsel, and stipulate and agree that, except with respect to Exhibits G and H,[1] all of the following, comprising a stipulation of facts and documentary evidence, is true, competent, and material, and should constitute and be admissible exclusively for this proceeding for all purposes, without foundation, and is subject to no objection by either party as to admissibility.

1. The Court has jurisdiction and venue over this action under §§508.010(1), 527.010, 527.020, 526.010, and 526.090, RSMo. (1986), as amended.[2]

2. Plaintiff Associated Industries of Missouri ("AIM") is a not-for-profit corporation formed under the laws of Missouri which operates as a "business league" within the meaning of §501(c)(6) of the Internal Revenue Code of 1986 (as amended). AIM's members are persons, firms, partnerships and corporations engaged in business or industry in Missouri. Several of AIM's members are multistate corporations whose principal operations and headquarters are located outside Missouri.

3. AIM's principal purpose is to promote a business-oriented philosophy in Missouri and to represent the interests of its

[1] Plaintiffs reserve the right to object to the introduction of Exhibits G and H into evidence on the grounds of materiality and relevance.

[2] Unless noted otherwise, all citations herein are to the Missouri Revised Statutes (1986)(as amended)("RSMo.").

members in the Missouri General Assembly, agencies and instrumentalities of the State. AIM was organized to secure cooperation among the industrial and commercial interests in the State of Missouri in all matters national and local affecting their welfare and the welfare of the people of Missouri.

4. AIM's members pay Missouri sales and use taxes, when applicable, on purchases of tangible personal property made within and without this State. Several of AIM's members also collect and remit Missouri use tax on sales of personal property made outside Missouri to purchasers located within Missouri. AIM's Board of Directors, acting on behalf of its members which pay Missouri sales and use taxes, have authorized the filing and prosecution of this action. A copy of the resolution by which the AIM Board of Directors acted is attached hereto as ExhibitA.

5. Plaintiff Alumax Foils, Inc. ("Alumax") is a Delaware corporation headquartered at 6100 South Broadway, St.Louis, Missouri 63111. Alumax manufactures and sells foil products both within and without Missouri. In connection with its business operations, Alumax purchases tangible personal property from sellers both within and without Missouri, and pays sales and use taxes, respectively, on such purchases. Alumax currently pays approximately $3,000 per month in Missouri use tax. Alumax currently purchases products from a vendor located in St. Francois County. A purchase made in June 1992 from this vendor was subject to state and local sales tax aggregating 4.975%. Alumax is a member of AIM and is authorized to do business in Missouri.

6. Defendant Raymond T. Wagner, Jr. is the duly appointed and qualified Director of Revenue within the meaning of Art. IV, §22 of the Missouri Constitution. This action has been properly brought against Defendant in his official capacity and not individually.

7. Section 144.610 imposes a use tax of 4.225% on the sales price of tangible personal property stored, used or consumed in Missouri. Section 144.748, RSMo. (Supp. 1991), imposes a new and additional use tax of one and one-half percent (1 1/2%) (the "Additional Use Tax") on all transactions subject to tax under §§144.600 to 144.745, RSMo. Voter approval of the Additional Use Tax was not required. Effective July 1, 1992, AIM's members, Alumax, and all other persons who sell or purchase tangible personal property subject to Missouri use tax will be required to collect or pay, as appropriate, the Additional Use Tax.

8. Compliance with §144.748 will impose significant economic costs upon AIM's members and Alumax. Costs will consist, inter alia, of the payment of such tax and the administrative costs of compliance.

9. Defendant must perform all functions incident to the administration, collection, enforcement and operation of the use taxes imposed by §144.610 and §144.748.

10. Section144.020, coupled with §§43(a) and 47(a) of Art. IV of the Missouri Constitution, impose a sales tax of 4.225% on the sales price of tangible personal property sold in Missouri (the "State Sales Tax"). The laws of the State of Missouri also authorize local governments to impose multiple sales taxes on certain sales of tangible personal property sold within their jurisdiction (the "Local Sales Tax"). *See* §§66.600-.635, 67.391-.395, 67.500-.545, 67.547, 67.550-.570, 67.581-.5 83, 67.590-.594, 67.671-.674, 67.700-.727, 67.729, 67.730-.739, 67.781-.790, 92.400-420, 94.500-.550, 94.577, 94.600-.655, and 94.700-.755. In order to impose Local Sales Tax, local action is required. The law specifies whether the voters in the jurisdiction imposing the tax must approve the tax or whether a local governing body may adopt the tax. Local Sales Taxes may have sunset provisions and expire on specified dates.

11. When collection of the Additional Use Tax begins on July 1, 1992, the aggregate State and Local Sales Tax rate in certain areas of Missouri will be lower than the aggregate use tax rate imposed by §144.610 and §144.748, RSMo.

12. Among the cities imposing Local Sales Tax at rates lower than 1-1/2% are Dexter in Stoddard County; Clifton Hill in Randolph County; New Cambria in Macon County; Napoleon in Lafayette County; Bixby and Glover, both in Iron County; Brandsville in Howell County; Stanberry in Gentry County; Kennett and Malden, both in Dunklin County; Winston in Daviess County; Gordonville in Cape Girardeau County; Monett in Barry County; and Farber in Audrain County. Cities and counties which currently impose Local Sales Tax at rates equal to or higher than 1-1/2% have authority to reduce or terminate such Local Sales Tax at a subsequent date.

13. Attached as Exhibit B is a chart that reflects by city and county the local sales tax rate in effect as of April 1992.

14. Attached as Exhibit C is a true and accurate copy of S.C.S.H.C.S.H.B. 25 as enacted by the General Assembly and signed by the Governor. Attached as Exhibit D is a true and accurate copy of H.B. 25 as originally introduced in the Missouri House of Representatives.

15. As of December 31, 1991, twenty-eight states other than Missouri authorized some form of local use tax. None of these states authorized the imposition of local use tax at a rate higher than the local sales tax within the same taxing jurisdiction.

16. Other sources of tax revenue for Missouri cities and counties, besides local sales tax, may include, *inter alia*, property taxes and business license taxes on public utilities. Cities and counties have the authority to decrease the rate of these taxes, or, subject to voter approval in most cases, increase them.

17. Attached as Exhibit E is a chart which reflects the amount of taxable sales for each city and county in this state for the calendar year 1990. The first column on this chart states the name of the city; the second column states the name of the county; the third column reflects the accumulative local sales tax rate (which includes all city and county sales taxes) in effect as of June 1, 1992; the fourth column reflects the amount of taxable sales reported to the Missouri Department of Revenue for the calendar year 1990 from the area listed; and the final column is the product of the sales tax rate as of June 1, 1992 (shown in Column 3) multiplied by the amount of taxable sales for the calendar year 1990 (shown in Column 4). The final column is illustrative only and the taxes shown are therefore hypothetical.

18. Attached as Exhibit F is a summary of the data contained in Exhibit E.

19. Attached as Exhibit G is an example of a sales tax return for a company that does business in all areas of the state. All taxpayer identifying information and all information reported by the taxpayer have been obliterated on this return.[3]

20. Attached as Exhibit H is a summary of the administrative costs which the Department of Revenue estimates it would incur during the first three fiscal years in the event: (1) Section 144.748, RSMo. (House Bill 25) goes into effect; or (2) local use taxes at variable rates throughout the state are put into effect.[4]

21. Attached as Exhibit I is a chart with the heading "Local Area Sales Tax Profiles All Levies -- As of 03May92." This chart reflects every county and city sales tax which has been levied in Missouri since such taxes were authorized by statute.

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[3] Plaintiffs reserve the right to object to the introduction of Exhibit G into evidence on the grounds of materiality and relevance.

[4] Plaintiffs reserve the right to object to the introduction of Exhibit H into evidence on the grounds of materiality and relevance.

22. The following cities listed in Exhibit I as having local sales tax levies which have ended were annexed by other cities as shown below:

Area Name	Annexed By
Bridgeton Terrace	Bridgeton
Cedar City	Jefferson City
Illmo	Scott City
Lutesville	Marble Hill
Mary Ridge	St. Ann
Schuermann Heights	Woodson Terrace

23. Times Beach, Missouri, which is listed in Exhibit I as having a local sales tax levy which ended, has become an unincorporated and uninhabited area.

24. Attached as Exhibit J is a summary of information included in Exhibit I, showing all areas with sales tax levies which have ended with no subsequent levy of a tax of equal or greater amount. This chart also reflects the aggregate amount of the local levies currently remaining in effect for each jurisdiction listed.

Respectfully submitted,

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Counsel for Plaintiffs

EXHIBIT A

Minutes of the Annual Meeting of Associated Industries of Missouri November 7-8, 1991, St. Louis, Missouri

Bob Martin, Chairman of the Association's Tax Committee, submitted the report that appears as attachment #12.

During the course of his report, Martin submitted the following policy resolution.

"Resolved that Associated Industries of Missouri will represent our members by filing a lawsuit in opposition to the state imposed 1.5% local use tax that was contained in HB 25 that was enacted in 1991. The Association will be reimbursed for the cost of this lawsuit by special contributions from our many members that are impacted by this local use tax."

Martin moved for the adoption of this policy resolution. This motion was seconded and adopted unanimously.

A motion was made to accept the report of the Tax Committee as filed. This motion was seconded and unanimously approved.

Page 39 intentionally left blank.

Pages 40-65 intentionally omitted.

Stipulation Exhibit B may be found at pages 11-37 of the Supplemental Legal File filed in the Supreme Court of Missouri.

EXHIBIT F

1990 Local Sales Tax Report — DOR
Special Summary for Office of the Attorney General
Levies by Group

Local Tax Rate	Number Of Jurisdictions	Total Taxable Sales	Sales Tax Receipts
Under 1.5	841	2,447,630,436	17,823,858
1.5	373	14,199,531,525	212,992,973
Over 1.5	359	19,016,236,886	415,052,937
	1,573	35,663,398,848	645,869,768

1990 Local Sales Tax Report — DOR
Special Summary for Office of the Attorney General
Levies by Group — Percent of Total

Group	Number Of Jurisdictions	Total Taxable Sales	Sales Tax Receipts
Under 1.5	53.46	6.86	2.76
1.5	23.71	39.82	32.98
Over 1.5	22.82	53.32	64.26
	99.99	100.00	100.00

1990 Local Sales Tax Report — DOR
Special Summary for Office of the Attorney General
Taxable Sales and Sales Tax Receipts by Combined Local Levy

Local Tax Rate	Number Of Jurisdictions	Total Taxable Sales	Sales Tax Receipts
3.500	1	1,813,583	63,475
3.250	1	6,285,617	204,283
3.000	16	1,008,908,940	30,267,268
2.750	7	203,094,660	5,585,103
2.625	1	2,219,764	58,269
2.500	85	3,001,802,071	75,045,052
2.375	7	77,498,923	1,840,599
2.250	36	6,412,809,193	144,288,207
2.215	5	652,783,253	13,871,644
2.000	161	3,984,839,427	79,696,789
1.875	12	77,695,673	1,456,794
1.750	20	3,516,048,174	61,530,843
1.625	7	70,437,609	1,144,611
1.500	373	14,199,531,525	212,992,973
1.375	23	173,555,629	2,386,390
1.250	15	36,298,145	453,727
1.000	311	748,973,046	7,489,730
0.875	20	118,811,655	1,039,602
0.750	52	160,503,900	1,203,779
0.625	16	46,555,548	290,972
0.500	390	991,931,408	4,959,657
0.000	14	171,001,105	0
	1573	35,663,398,848	645,869,768

1990 Local Sales Tax Report — DOR
Special Summary for Office of the Attorney General
Taxable Sales and Sales Tax Receipts by Combined Local Levy
Percent of Total

Local Tax Rate	Number Of Jurisdictions	Total Taxable Sales	Sales Tax Receipts
3.500	0.06	0.01	0.01
3.250	0.06	0.02	0.03
3.000	1.02	2.83	4.69
2.750	0.45	0.57	0.86
2.625	0.06	0.01	0.01
2.500	5.40	8,42	11.62
2.375	0.45	0.22	0.28
2.250	2.29	17.98	22.34
2.125	0.32	1.83	2.15
2.000	10.24	11.17	12.34
1.875	0.76	0.22	0.23
1.750	1.27	9.86	9.53
1.625	0.45	0.20	0.18
1.500	23.71	39.82	32.98
1.375	1.46	0.49	0.37
1.250	0.95	0.10	0.07
1.000	19.77	2.10	1.16
0.875	1.27	0.33	0.16
0.750	3.31	0.45	0.19
0.625	1.02	0.13	0.05
0.500	24.79	2.78	0.77
0.000	0.89	0.48	0.00
	100.00	100.02	100.02

EXHIBIT H

ADMINISTRATIVE COSTS OF IMPLEMENTING AND COLLECTING LOCAL USE TAX

LOCAL USE TAX — VARIABLE RATES THROUGHOUT THE STATE:

FIRST FISCAL YEAR: $1,288,867
SECOND FISCAL YEAR: $1,132,160
THIRD FISCAL YEAR: $1,168,344

LOCAL USE TAX AT UNIFORM RATE STATEWIDE (AS ENACTED BY HOUSE BILL 25):

FIRST FISCAL YEAR: $123,870
SECOND FISCAL YEAR: $101,696
THIRD FISCAL YEAR: $93,002

SAVINGS RESULTING FROM UNIFORM RATE VERSUS NON-UNIFORM RATE:

FIRST FISCAL YEAR: $1,164,997
SECOND FISCAL YEAR: $1,030,464
THIRD FISCAL YEAR: $1,075,342

PLEASE NOTE:

Attachment I is the Truly Agreed and Finally Passed Fiscal Note Response for House Bill 25, which is codified as section 144.748 in the RSMo Supp 1971. This attachment shows the costs of implementing the uniform rate statewide.

Attachments II & III represent costs that would be incurred if each city and/or county were to impose local use taxes individually; therefore, the costs are expressed as ranges. The lower end of the ranges represents costs to the Department of Revenue that would have resulted whether or not any city or county ever

imposed the local use tax since the Department would need to be able to collect those taxes and would need to perform computer system modifications to accomodate [*sic*] collection. The upper end of the ranges represents the Department's costs if every city and county imposed the tax.

The figures in this sheet represent the costs that would have resulted if the local use tax were imposed at varying rates statewide rather than one uniform rate as in current law.

ATTACHMENT I

STATE OF MISSOURI
Department of Revenue
(314) 751-2110

Office of Legislation and Regulations
P.O. Box 629
Jefferson City, MO 65105-0629

TO: ROB NICHOLLS

FROM: DEEDEE TATE

DATE: MAY 21, 1991

SUBJECT: FISCAL NOTE 88-5A

Please find attached the Department of Revenue's response to the above-referenced Fiscal Note request. The estimated fiscal impact is as follows:

	FY92	FY93	FY94
General Revenue	($123,870)	$483,484 to $679,007	$521,437 to $726,737

If you have any questions regarding this matter, please feel free to contact me

DDT:rlm

Attachment

Fiscal Estimate Worksheet Fiscal Note No. 88-5A
Bill No. SCS HCS HB 25 TAFP

* * *

5. Essential objectives of the legislation from your agency's point of view.

This proposal:

* * *

C. Authorizes a statewide local use tax in the amount of one and one-half percent (1.5%) to be distributed to all political subdivisions based upon the subdivisions' pro rata share of local sales tax distributions. Distribution of the local use tax moneys to St. Louis County and all cities therein would further be apportioned based upon population.

* * *

6. Long-Range Fiscal Implications.

There would be a cost to the State in FY 92 and a gain to the State in each succeeding fiscal year attributable to the local use tax portion of the proposal.

7. Assumption and methodology used in arriving at state fiscal impact.
(Please list all references.)

ADMINISTRATIVE IMPACT:

* * *

Therefore, the only part of this proposal that affects the Department administratively is the local use tax portion. See the attached Fiscal Estimate worksheet and response to Question #8 for detailed administrative cost impact associated with administration of the local use tax.

* * *

QUESTION #7 (continued):

REVENUE IMPACT:

Revenue that would be generated by the local use tax portion of this proposal is expressed as a range. The lower end of the range represents the impact resulting from applying the local use tax to the current use tax base. The upper end of the range is the potential impact that could result if the Advisory Commission on Intergovernmental Relations (ACIR) estimates of mail order use tax transactions are correct. Since the definition of "vendor" was expanded to include certain mail order businesses during the 85th General Assembly, Second Regular Session, an increase in use tax taxable sales is anticipated; however, the actual amount of such increase is unknown.

* * *

8. Enter specific duties and responsibilities for new employees listed on page 4. (Please be detailed)

DIVISION OF TAXATION & COLLECTION:

The Division would require the services of one (1) Tax Audit Analyst II to handle technical support and coordination of initial implementation of the local use tax (including notifying affected businesses and handling problems with taxpayers resulting from confusion of adding a local rate to the use tax rate). The Analyst would also be responsible for maintenance of the use tax accounts including delinquent collections and answering taxpayer's questions via telephone calls and correspondence. Also, the Division would require one (1) Senior Accountant to handle distribution of the local use tax to political subdivisions, reports to the political subdivisions, protest accounts, and all associated accounting work that would be required by this proposal.

INFORMATION SYSTEMS DIVISION:

The Information Systems Division would be required to develop a new system for distribution of the local use taxes collected. The new system would be linked to the current use tax collection system. Testing of the new system, as well as maintenance and support of the new system, would also be required. Modifications to the existing system to accommodate the new system would also be necessary and would be performed by the Legislative Programming Group (LPG).

NOTE: Because the ISD "Legislative Programming Group" was funded during the 1st Regular Session of the 85th General Assembly, no request will be made in DCR's budget proposal for Personnel Services (PS) — $5,454 (including fringe benefits) — to modify existing programs/systems. State Data Center (SDC) costs will be requested.

OFFICE OF THE GENERAL COUNSEL:

The Office of the General Counsel anticipates litigation resulting from this proposal and would utilize one (1) existing Associate Counsel, 25% of the time, to represent the Department in such litigation.

LOCAL FISCAL ESTIMATE WORKSHEET	FISCAL NOTE 888-5A	BILL NUMBER SCS HCS HB 25 TAFP

1. ___ No Local Fiscal Effect
2. _X_ Increase Cost*
   _X_ Permissive __ Mandatory
   __ Decrease Cost
   __ Permissive __ Mandatory
4. _X_ Increase Revenue*
   _X_ Permissive _X_ Mandatory
5. _X_ Decrease Revenue*
   __ Permissive _X_ Mandatory

6. Types of Local Government Units Affected
   _X Counties __ Road District
   _X Municipalities __ Townships
   __ Ambulance District __ Water District
   __ Other Special Districts: _____

*-NOTE: The local use tax is a mandatory revenue increase; the tourism taxes will be a permissive revenue increase and unknown permissive administrative costs; the property tax change would be a mandatory revenue decrease.

I. ONE-TIME COSTS OR REVENUE FLUCTUATION FOR LOCAL GOVERNMENT $0

II. LONG-RANGE LOCAL FISCAL IMPACT

III. ESTIMATED LOCAL EFFECT

LOCAL COSTS BY PURPOSE, BUDGET FUNCTION	FY92	FY93	FY94	ANNUALIZED
SEE NOTE ABOVE	$0	$0	$0	$0
	$0	$0	$0	$0
	$0	$0	$0	$0
TOTAL LOCAL COSTS - ALL PURPOSES	$0	$0	$0	$0

IV. INCOME SOURCES	FY92	FY93	FY94	ANNUALIZED
CITIES - NOTE: These estimates are for the local use tax part of the bill only. See note above.	$0	$35,918,349	$37,714,267	$35,918,349
	TO	TO	TO	TO
	$0	$47,919,580	$50,315,559	$47,919,580
COUNTIES - NOTE: These estimates are for the local use tax part of the bill only. See note above.	$0	$22,014,472	$23,115,196	$22,014,472
	TO	TO	TO	TO
	$0	$29,370,065	$30,838,569	$29,370,065
TOTAL INCOME - ALL SOURCES	$0	$57,932,821	$60,829,462	$57,932,821
	TO	TO	TO	TO
	$0	$77,289,646	$81,154,128	$77,289,646
V. NET EFFECT ON LOCAL FUNDS	SEE NOTE ABOVE	SEE NOTE ABOVE	SEE NOTE ABOVE	SEE NOTE ABOVE
TOTAL SAVINGS	$0	--$0	$0	$0

AGENCY: DEPARTMENT OF REVENUE
ANALYST: RAY MCCARTY
PHONE NUMBER: 751-2110 DATE: 05/31/91

SOURCES OF INFORMATION:

* * *

ATTACHMENT II

LOCAL OPTION — SAME COMBINED RATE FOR SALES & USE TAX

This proposal allows political subdivisions the option of imposing local compensating use taxes. If the political subdivision does impose a local use tax, the tax must be imposed at the same rate and for the same time period as its corresponding local sales tax. Consequently, the combined rate of all local use taxes in effect within the political subdivision's taxing jurisdiction at any particular time would be equal to the combined rate of all local sales taxes in effect within the jurisdiction at the same time. Administration of this type of local use tax would be quite expensive since the Department's Information Systems Division would be required to make certain modifications to the current sales tax system as well as develop a new use tax system capable of accounting for the collection and distribution of the new local use taxes. Computer storage costs are also expected to be quite high if many local use taxes were implemented. Also, the Division of Taxation would require many additional regular FTE's to handle all facts of administration, collection, enforcement, and distribution of the taxes and some temporary FTE's to initially register accounts into the new computer system.

	FY 92	FY 93	FY 94
REVENUE & ADMINISTRATIVE IMPACT:			
LOCAL GOVERNMENTS:			
Cities	— 0 — to $27,178,965	— 0 — to $57,075,827	— 0 — to $59,929,618
Counties	— 0 — to $19,440,186	— 0 — to $40,824,391	— 0 — to $42,865,610
STATE GOVERNMENT:			
Collection Fee (General Revenue)	— 0 — to $470,901	— 0 — to $988,891	— 0 — to $1,038,336
(-) DOR Costs	($153,037) to ($1,288,867)	($4,271) to ($1,132,160)	($4,271) to ($1,168,344)
NET IMPACT TO GR:	($153,037) to ($817,967)	($4,271) to ($143,269)	($4,271) to ($130,008)

ASSUMPTIONS AND METHODOLOGY:

The effective date of the proposal is assumed to be August 28, 1991. The first local use tax is assumed to begin January 1, 1992.

The ranges shown above for revenue which may be generated by this proposal were necessary since the actual increase in taxable sales resulting from the passage of HB 960 during the 2nd Regular Session of the 85th General Assembly is unknown. The lower range represents no such increase and the higher range

represents the increase as estimated by the Advisory Commission on Intergovernmental Relations (ACIR). Ranges for the Department of Revenue's costs were used since much of the cost of the proposal will depend upon the number of political subdivisions which actually implement local use taxes and the number of businesses affected by the taxes. The lower range for costs represents costs to the Information Systems Division which would be required to prepare for collection of the tax even if no tax is actually passed. Approximately six months will be required prior to implementation of the local use tax for the Division to accomplish the necessary computer changes and system development. The high range for costs represents costs to the Division of Taxation and Collection and the Information Systems Division if all possible local use taxes were enacted. Of course, it is unlikely all political subdivisions will impose local use taxes the first fiscal year; however, the possibility does exist that all political subdivisions will eventually impose local use taxes. It is this possibility that requires the use of a range to express the Department's costs to implement this proposal.

STATE FISCAL ESTIMATE WORKSHEET	FISCAL NOTE #ATTACHMENT II		BILL NUMBER	
I. ONE TIME COSTS (Do not include in annualized)				
II. STATE COSTS BY CATEGORY	FY92	FY93	FY94	ANNUALIZED
SALARIES	$617,553	$573,918	$602,613	$573,913
FRINGE BENEFITS	$161,181	$149,793	$157,282	$149,793
EQUIPMENT & EXPENSES	$410,133	$308,449	$308,449	$308,449
TOTAL STATE COSTS - ALL CATEGORIES	$1,188,867	$1,032,160	$1,068,344	$1,032,160
III. STATE COSTS BY FUND	FY92	FY93	FY94	ANNUALIZED
GENERAL REVENUE FUNDS	$153,037 TO $1,288,867	$4,271 TO $1,132,160	$4,271 TO $1,168,344	$4,271 TO $1,132,160
OTHER	$0	$0	$0	$0
TOTAL STATE COSTS - ALL FUNDS	SEE ABOVE	SEE ABOVE	SEE ABOVE	SEE ABOVE
IV. STATE REVENUE SOURCES	FY92	FY92	FY92	ANNUALIZED
GENERAL REVENUE FUND	$0 TO $470,901	$0 TO $988,891	$0 TO $1,038,336	$0 TO $988,891
	$0	$0	$0	$0
	$0	$0	$0	$0
OTHER	$0	$0	$0	$0
TOTAL STATE REVENUE - ALL SOURCES	SEE ABOVE	SEE ABOVE	SEE ABOVE	SEE ABOVE
HIGHWAY FUNDS	$0	$0	$0	$0
TOTAL SAVINGS - ALL FUNDS	$0	$0	$0	$0
VI. NET EFFECT ON STATE FUNDS	($153,037) TO ($817,967)	($4,271) TO ($143,269)	($4,271) TO ($130,008)	($4,271) TO ($143,269)

AGENCY: DEPARTMENT OF REVENUE — SOURCES OF INFORMATION:
ANALYST: RAY MCCARTY
PHONE NUMBER: 751-2110 — DATE: 11/20/90

ANALYST'S SIGNATURE — PAGE 3 OF 9

METHODOLOGY FOR DETERMINING LOCAL USE TAX REVENUE IMPACT

$653,364,663	ALL LOCAL SALES TAX COLLECTIONS FY 89
- - - - - - - -	ALL SALES TAX TAXABLE SALES FY 89*
	EQUALS
1.9%	LOCAL SALES TAX FACTOR
X	TIMES
$4,281,911,307	USE TAX TAXABLE SALES FY 89*
	EQUALS
$81,243,173	PROJECTED USE TAX COLLECTIONS FY 89

BY PROJECTING THE FY 89 TAXABLE SALES FIGURE INTO FUTURE FISCAL YEARS, IT IS POSSIBLE TO ESTIMATE THE MAXIMUM REVENUE IMPACT WHICH MAY RESULT TO THE GENERAL REVENUE FUND AND ALL LOCAL USE TAX FUNDS. APPLYING THE RELATIVE PERCENTAGE OF COLLECTIONS FOR EACH DIFFERENT TYPE OF LOCAL USE TAX TO THE TOTAL ESTIMATED COLLECTIONS WOULD PRODUCE THE FOLLOWING FIGURES BY TYPE OF TAX:

ANNUAL GROWTH RATE: 5%

$4,281,911,307	USE TAX TAXABLE SALES FY 89
$4,496,006,872	ESTIMATED USE TAXABLE SALES FY 90
$4,720,807,216	ESTIMATED USE TAXABLE SALES FY 91
$4,956,847,577	ESTIMATED USE TAXABLE SALES FY 92
$5,204,689,956	ESTIMATED USE TAXABLE SALES FY 93
$5,464,924,453	ESTIMATED USE TAXABLE SALES FY 94

* NOTE: USE OF THE SALES TAX TAXABLE SALES FIGURE WILL PRODUCE CONSERVATIVE ESTIMATES SINCE NOT ALL TRANSACTIONS THAT ARE SUBJECT TO STATE SALES TAX ARE SUBJECT TO LOCAL SALES TAX. HOWEVER, THE FIGURES WILL BE SOMEWHAT OFFSET BY THE INCLUSION OF MAIL ORDER SALES IN THE "USE TAX TAXABLE SALES" FIGURE FOR FY 89. ESTIMATES OF MAIL ORDER SALES WERE PREPARED BY ACIR AND ADJUSTED TO REFLECT A MISSOURI GROWTH RATE OF 5%.

FISCAL YEAR 1992 (6 MONTHS)

$17,482,182	CITY USE TAXES
$8,298,209	COUNTY USE TAXES
$7,272,588	ST. LOUIS COUNTY USE TAX
$8,671,162	PUBLIC MASS TRANSIT USE TAXES
$3,776,151	COUNTY ALTERNATE USE TAXES
$93,238	COUNTY CORRECTIONAL USE TAXES
$1,025,621	CITY ALTERNATE USE TAXES
$46,619,151	ESTIMATED TOTAL LOCAL USE TAXES FY 92
$470,901	1% COLLECTION FEE TO GENERAL REVENUE

FISCAL YEAR 1993

$36,712,582	CITY USE TAXES
$17,426,239	COUNTY USE TAXES
$15,272,434	ST. LOUIS COUNTY USE TAX
$18,209,441	PUBLIC MASS TRANSIT USE TAXES
$7,929,918	COUNTY ALTERNATE USE TAXES
$195,800	COUNTY CORRECTIONAL USE TAXES
$2,153,805	CITY ALTERNATE USE TAXES
$97,900,218	ESTIMATED TOTAL LOCAL USE TAXES FY 93
$988,891	1% COLLECTION FEE TO GENERAL REVENUE

FISCAL YEAR 1994

$38,548,211	CITY USE TAXES
$18,297,551	COUNTY USE TAXES
$16,036,056	ST. LOUIS COUNTY USE TAX
$19,119,913	PUBLIC MASS TRANSIT USE TAXES
$8,326,414	COUNTY ALTERNATE USE TAXES
$205,590	COUNTY CORRECTIONAL USE TAXES
$2,261,495	CITY ALTERNATE USE TAXES
$102,795,229	ESTIMATED TOTAL LOCAL USE TAXES FY 94
$1,038,336	1% COLLECTION FEE TO GENERAL REVENUE

ATTACHMENT III

LOCAL OPTION — POTENTIALLY DIFFERENT COMBINED RATE FOR SALES & USE TAXES

This proposal allows political subdivisions the option of imposing local compensating use taxes with potentially different rates for each different type of tax. The political subdivision is not required to have the same rate as the local sales tax; therefore, this proposal is the most expensive for the Department of Revenue to administer. This proposal would require all of the changes explained for Attachment II and would require some additional programming time for the Information Systems Division during the first fiscal year. Since rates for each local use tax type could be different than the rate for the corresponding local sales tax type, the rate information necessary to process the local sales tax could not be used to process local use tax.

	FY 92	FY 93	FY 94
REVENUE & ADMINISTRATIVE IMPACT:			
LOCAL GOVERNMENTS:			
Cities	— 0 — to $27,178,965	— 0 — to $57,075,827	— 0 — to $59,929,618
Counties	— 0 — to $19,440,186	— 0 — to $40,824,391	— 0 — to $42,865,610
STATE GOVERNMENT:			
Collection Fee (General Revenue)	— 0 — to $470,901	— 0 — to $988,891	— 0 — to $1,038,336
(-) DOR Costs	($212,077) to ($1,347,907)	($4,271) to ($1,132,160)	($4,271) to ($1,168,344)
NET IMPACT TO GR:	($212,077) to ($877,007)	($4,271) to ($143,269)	$4,271) to ($130,008)

ASSUMPTIONS & METHODOLOGY: The same assumptions and methodology used for Attachment II apply to the above estimates except that approximately nine months will be required by the Information Systems Division to accomplish the computer system changes and new system development.

STATE FISCAL ESTIMATE WORKSHEET — FISCAL NOTE (ATTACHMENT III) — BILL NUMBER

I. ONE TIME COSTS (Do not include in annualized)

II. STATE COSTS BY CATEGORY	FY92	FY93	FY94	ANNUALIZED
SALARIES	$664,373	$573,918	$602,613	$573,918
FRINGE BENEFITS	$173,401	$149,793	$157,282	$149,793
EQUIPMENT & EXPENSES	$410,133	$308,449	$308,449	$308,449
TOTAL STATE COSTS - ALL CATEGORIES	$1,247,907	$1,032,160	$1,068,344	$1,032,160
III. STATE COSTS BY FUND	FY92	FY93	FY94	ANNUALIZED
GENERAL REVENUE FUNDS	$212,077 TO $1,347,907	$4,271 TO $1,132,160	$4,271 TO $1,168,344	$4,271 TO $1,132,160
OTHER	$0	$0	$0	$0
TOTAL STATE COSTS - ALL FUNDS	SEE ABOVE	SEE ABOVE	SEE ABOVE	SEE ABOVE
IV. STATE REVENUE SOURCES	FY92	FY92	FY92	ANNUALIZED
GENERAL REVENUE FUND	$0 TO $470,901	$0 TO $988,891	$0 TO $1,038,336	$0 TO $988,891
	$0	$0	$0	$0
	$0	$0	$0	$0
OTHER	$0	$0	$0	$0
TOTAL STATE REVENUE - ALL SOURCES	SEE ABOVE	SEE ABOVE	SEE ABOVE	SEE ABOVE
HIGHWAY FUNDS	$0	$0	$0	$0
TOTAL SAVINGS - ALL FUNDS	$0	$0	$0	$0
VI. NET EFFECT ON STATE FUNDS	($212,077) TO ($877,007)	($4,271) TO ($143,269)	($4,271) TO ($130,005)	($4,271) TO ($143,269)

AGENCY: DEPARTMENT OF REVENUE — SOURCES OF INFORMATION:

ANALYST: RAY MCCARTY

PHONE NUMBER: 751-2110 — DATE: 11/20/90

ANALYST'S SIGNATURE

ATTACHMENT IV

LOCAL OPTION — SAME COMBINED RATE FOR SALES & USE TAX WITH 2% COLLECTION FEE

This proposal is the same as the proposal in Attachment II, except that the collection fee which is deposited to the General Revenue Fund is increased from 1% to 2% for the local use taxes to offset the costs of collection.

	FY 92	FY 93	FY 94
REVENUE & ADMINISTRATIVE IMPACT:			
LOCAL GOVERNMENTS:			
Cities	— 0 — to $26,904,430	— 0 — to $56,499,304	— 0 — to $59,324,269
Counties	— 0 — to $19,243,821	— 0 — to $40,412,023	— 0 — to $42,432,625
STATE GOVERNMENT:			
Collection Fee (General Revenue)	— 0 — to $941,801	— 0 — to $1,977,782	— 0 — to $2,076,671
(-) DOR Costs	($153,037) to ($1,288,867)	($4,271) to ($1,132,160)	($4,271) to ($1,168,344)
NET IMPACT TO GR:	($153,037) to ($347,066)	($4,271) to $845,622	($4,271) to $908,327

ASSUMPTIONS & METHODOLOGY: The same assumptions and methodology used for Attachment II apply to the above estimates.

EXHIBIT J

LOCAL AREA SALES TAX PROFILES
SUMMARY OF DATA

Areas With Sales Tax Levies Which Have Ended
With No Subsequent Levy Of Equal or Greater Amount

Key	Area Name	Beginning Date	Ending Date	Tax Rate	Purpose	Aggregate Amount of Remaining Local Levies
00019-160-A	Boone County	JUL 86	JUL 91	0.250	Capital Improvements	.500
00021-160-A	Buchanan County	JAN 84	JAN 89	0.375	Capital Improvements	.500
00031-160-A	Cape Girardeau County	JAN 86	JAN 90	0.250	Capital Improvements	.500
00073-160-A	Gasconade County	APR 87	JAN 91	0.500	Capital Improvements	1.000
00135-160-A	Moniteau County	JAN 85	JAN 88	0.250	Special	.500
00141-160-A	Morgan County	JAN 85	JAN 86	0.500	Special	.500
00157-160-A	Perry County	JAN 87	JAN 91	0.500	Special	.500
00186-161-B	Ste. Genevieve County	OCT 86	OCT 87	0.100	Special	1.000
00187-160-A	St. Francois County	JAN 86	JAN 87	0.250	Special	.750
00189-120-A	St. Louis County	MAR 78	NOV 81	1.000	Regular	1.500
00195-160-A	Saline County	JAN 84	JAN 85	0.500	Special	.500
00199-162-A	Scotland County	APR 88	JAN 89	0.500	Law Enforcement	1.250
00201-160-A	Scott County	JAN 86	JAN 90	0.250	Capital Improvements	.500
00201-161-A	Scott County	OCT 87	JUL 89	0.250	Capital Improvements	.500
06454-161-B	Bloomsdale	OCT 86	OCT 87	1.000	Special	.000
64180-161-B	Ste. Genevieve	OCT 86	OCT 87	1.000	Special	1.500
64550-150-A	St. Joseph	OCT 89	SEP 91	0.250	Capital Improvements	1.000
65000-150-A	St. Louis	JUL 84	APR 90	0.375	Capital Improvements	1.500
65034-161-B	St. Mary	OCT 86	OCT 87	1.000	Special	1.000

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

CV192-0015CC

[Caption omitted in printing]

TRANSCRIPT OF PROCEEDINGS

[1]

On the 24th day of June, 1992, the following proceedings were held before The Honorable James F. McHenry, Judge, Division I, 19th Judicial District, sitting at Jefferson City, Cole County, Missouri

[2]

APPEARANCES

FOR THE PETITIONER:

JUAN KELLER
BRENDA TALENT
Attorneys at Law
BRYAN, CAVE
211 North Broadway
St. Louis, MO 63102

FOR THE RESPONDENT:

CAROLEE LEWIS ILES
Assistant Attorney General
Broadway State Office Building
Jefferson City, MO 65101

FOR THE INTERVENOR:

ALEX BARTLETT
Attorney at Law
235 East High, The Monroe House
Jefferson City, MO 65109

INDEX

Preliminary matters

F. JOE DeLONG
Direct Examination by Mr. Bartlett
Cross-Examination by Mr. Keller

[3]

PROCEEDINGS

THE COURT: Enter your appearances for the record.

MR. KELLER: Juan Keller and Brenda Talent for the plaintiff.

MS. ISLES [sic]: Carole [sic] Isles [sic] for the Defendant, Director of Revenue.

MR. BARTLETT: Alex Bartlett for the Defendant/Intervenors.

THE COURT: Anything preliminary, folks?

MR. BARTLETT: Your Honor, I think we've stipulated to most of the record. A stipulation has been prepared between the plaintiffs and Defendant, Department of Revenue, that has been signed by counsel.

I would state for the record that the Defendant/Intervenors join in that stipulation, so that those matters may be made a part of the agreed record in this case.

Further, there will be depositions to be made a part of the record that have been taken. There are three depositions: Beth Harris, Edward H. Robb, Raymond McCarthy, and certain deposition exhibits attached to those original depositions.

By agreement, those depositions will be a part of the record with the parties reserving their [4] respective objections to relevancy and of the matters testified to.

And the — third, I would — on behalf of the intervenors, there will be certain additional agreed statements of fact that I would have the court reporter mark at this time as, I think, as an exhibit perhaps. It will be a part of the record, or I can read them in to the record.

Perhaps it would be easier to mark them — we'll mark them individually and then they will be a part of the record.

THE COURT: I think that will be best marked Intervenor 1 through 5.

MR. KELLER: Your Honor, while they're talking, Exhibit D to the stipulation is the original of House Bill 25. That's not in the stipulation. We're going to submit that separately. We'll mail that to you. And it's not terribly important, but it's not in the packet.

THE COURT: What's the House Bill?

MR. KELLER: 25.

THE COURT: I will get that in a couple days or so?

MR. KELLER: Yes, sir.

MR. BARTLETT: Your Honor, we've marked [5] Intervenor's Exhibits 1 through 5. Additional facts that would be agreed facts — exhibits — Intervenor No. 1 is with respect to Missouri Association of Counties; Intervenor No. 2 is with respect to Missouri Municipal League, Intervenor Exhibit 3 is with respect to Associated General Contractors of Missouri, Exhibit 4 is with respect to Gary Markenson (ph sp), and Exhibit 5 is with respect to the City of Blue Springs.

THE COURT: All right. Any problem with that, counsel?

MR. KELLER: No, sir.

THE COURT: Okay. Anything else?

MR. BARTLETT: I would call — whenever we get to —

MR. KELLER: I've got a couple of things on the stipulation, your Honor.

THE COURT: Okay.

MR. KELLER: You'll notice from the first part of the stipulation that we reserve the right to object to Exhibits G and H to the stipulation.

Exhibit G is a sales tax return — stipulated — that had been prepared by a Missouri tax preparer showing the administrative burden of preparing taxes based on local taxes.

Exhibit H is the physical not to House Bill [6] 25, and the purpose of Exhibit H, according to stipulation, is — one of the purposes is to show the cost to the State of Missouri if separate local use tax were imposed as opposed to a statewide rate.

The object of this, as I understand it, is to show the administrative burden on the state and on taxpayers if they have to — if they had to pay separate local use taxes as they do sales taxes. That administrative burden is urged, as I understand it, by the Attorney General as a basis for the statewide rate, and as a basis for the discrimination such as it is between the local use tax according to House Bill 25 and issuance tax.

The Supreme Court of the United States decided the Craft case last week. One of the things that Craft says is that — the ease of administration caused, or that is alleviated by a certification, foreign dividends is not a sufficient kind of health and safety concern to justify discriminatory state tax legislation with respect to economic or tax statutes.

The other thing that Kraft says with respect to this case, that has a bearing on this case, is that you don't test discrimination under the commerce clause or the foreign commerce clause, which was at issues in that case.

[7]

By looking at the broad-base, the taxation of U.S. dividends versus foreign dividends, you look at the specific transaction by transaction situation.

The relevance that Kraft has to this case is, in that respect, as I understand the position of the State, and maybe the Intervenors, one of the positions that they're taking is that if you compare the total sales tax, local sales tax against the total local use tax, there may or may not be discrimination.

What happens in this case, however, is that there's a stipulation — if you look at it — that shows that there's substantial areas of this state, including up to 25 percent of the population, where the local use tax rate is less than the local sales tax rate — I'm sorry, The local sales tax rate is less than the 1.58 local use tax.

And as we read Kraft, and as Kraft applies to this case, you look at each of those individual situations to determine if there's discrimination.

And what we've done is prepared a memorandum for you of our objections to Exhibits G and H that sets forth what we think the Kraft case says.

And I also am going to tender you a copy of the Kraft case off of LEXIS, and I've marked in yellow on page 9 of the LEXIS printout those parts of it that, [8] that we think are relevant.

THE COURT: All right.

MR. KELLER: Finally, your Honor, we think that this case is resolved by paragraphs 11 and 15 of the stipulation. Paragraph 11 says, in light of Kraft, that the local -- that the local sales tax rates in a lot of areas of this state are less than the local use tax rate under House Bill 25.

Paragraph 15 talks about 20 other states that impose local use taxes. None of those states authorize the imposition of a local use tax at a rate higher than the local sales taxes within the same taxing jurisdiction.

That's consistent with the Ohio case and the Oklahoma case that were argued to you in the Motion for Summary Judgment, which rely on the Hally Burton (ph. sp.) case; and that's what we urge as control.

That's the only preliminary matter we've got, your Honor.

THE COURT: Another [sic] other preliminary matters?

MS. ILES: I'd like to have admitted into evidence the three depositions that Mr. Bartlett referred to.

THE COURT: I thought that was part of the [9] agreement.

MR. KELLER: It is.

THE COURT: You're simply observing the objections that are there and stated, correct?

MS. ILES: Copies have already been submitted to the court by the court reporter.

THE COURT: Okay. No problem with that. Okay.

Anything else?

MR. BARTLETT: Yes. We call Joe DeLong.

F. JOE DeLONG, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BARTLETT:

Q. Would you please state your name for the record, sir?

A. F. Joe DeLong. I live at 1115 Moreau Drive, Jeff City, Missouri.

Q. And what is your business, sir?

A. I'm Chairman of the Board of DeLong's, Incorporated, a local steel fabricating company.

Q. And for how long have you been associated with DeLong's, Incorporated, either as Chairman of the Board or President?

A. Forty-seven years.

Q. Now, where is DeLong's principal office [10] located?

A. 301 Dix Road here in Jeff City.

Q. And with respect to its operation, does DeLong's, Incorporated pay state and local taxes?

A. Yes.

Q. Now, in particular, with respect to local sales taxes, what are the local sales tax rates, combined rate here in Jeff City?

A. Two percent, county and city together.

Q. And with respect to — strike that. What is your principle [sic] product?

A. Fabricated steel bridges for highway construction is our major product.

MR. KELLER: Your Honor, I'd like to state a particular objection to this line of testimony. I — it's — the position of the Plaintiffs in this case is that the discrimination is with respect to

those areas of the state where the local sales tax rate is less than the local use tax rate.

The fact that it may be higher in some areas we contend is irrelevant to the issue of discrimination. I don't want to keep interrupting, but I do want to state that objection for the record once.

THE COURT: There's no reason you shouldn't have a continuing objection, is there?

[11]

MR. BARTLETT: No.

THE COURT: Okay. You shall have it

BY MR. BARTLETT:

Q. With respect to the bridges which DeLong's, Incorporated fabricates and sells in Missouri, are those normally subject to sales taxes or are they of an exempt type:

A. Yes.

Q. Now, with respect to the building of bridges and providing the bridges, are there very many people engaged in that type of business in Missouri, type of business that you're in?

A. No. There's only one other company besides us, and they're in St. Louis, Missouri, Stupp Brothers Bridge and Iron Company.

Q. How many steel fabricators are there that will usually bid on public jobs in Missouri?

A. It will average about five to six.

Q. And those other fabricators are from out of state; is that correct?

A. Yes.

Q. How, with respect to those fabricators, whenever they supply or get the bid, are they subject, if you know, to any local use taxes in Missouri?

A. No. They only have to charge the customer [12] the state use tax.

Q. Now, within the steel fabrication industry — well, strike that. Are most of your sales on a competitive bid basis?

A. Yes. We bid aluminum on a per pound basis on each project; and it's a firm bid that — and we bid direct to the contractor then.

Q. Now, would that include a — the sales taxes within that bid?

A. Yes.

Q. Now, these would not be — are these — those aren't the articles for resale, are they?

A. No. No.

Q. Would you explain what the concept of articles for resale is, as you understand them?

A. If one sells to, say, an agent or to a store or somebody that's going to resell the project, then the State allows the manufacturer to have a resale exemption number so they don't have to charge that, but if you sell directly to the — a contractor or the end user, you have to charge both city — city, county and state sales tax.

Q. Now, have you found that as a result of the local sales taxes that you are at a competitive disadvantage without-of-state companies?

[13]

MR. KELLER: Objection. Leading, but —

BY MR. BARTLETT:

Q. Can you tell the court —

MR. BARTLETT: I'll rephrase it.

BY MR. BARTLETT:

Q. With respect to the bidding process, can you describe for the court whether or not the legal sales taxes that you have to pay put you at a competitive advantage or disadvantage?

A. Yes. We're a member of the AISC, as an example. That's the specifying agent for steel fabricators. And as an example, in 1981 — in 1991, the average profit for steel fabricators was point — 1.82, which is less than the difference an individual firm such as us have to pay in the sales tax in Missouri.

Q. So now does DeLong's also sell steel out of state?

A. Yes, uh-huh.

Q. And in that connection, does DeLong's process use tax in connection with other states?

A. Yes.

MR. BARTLETT: I have no further questions.

THE COURT: Cross-examination.

CROSS-EXAMINATION BY MR. KELLER:

[14]

Q. Mr. DeLong, you said that your chief competitor in Missouri is Stupp Brothers in St. Louis?

A. Yes.

Q. Do you know what the local stales tax rate is in St. Louis?

A. I have a record of that, but it's roughly — it's near 1, Jeff City is.

Q. Would it surprise you if it was, in fact 3 percent instead of 2?

A. No, it wouldn't surprise me.

Q. Do you out-bid Stupp Brothers very often on the jobs that you —

A. No.

Q. — that you have? Why not?

A. Well, our competition is out of state. Stupp Brothers have the same disadvantage as we do have. Stupp sells very few bridges in Missouri. He has to go out of state, too.

Q. Do you — he does a lot of work other than bridges. Most of his work is outside of the bridge area, isn't it? Doesn't he do—

A. No. I would say that probably the bulk of his work — I have no way of knowing for sure, but I would say the bulk of his work is bridge work, although he is heavy in other work, too.

[15]

Q. Do you remember whether Stupp supplied the steel, for example, for that new Mercantile building in downtown St. Louis?

A. I don't know which buildings that he furnishes. I only complete with him on bridges.

Q. Do you — in connection with those bridges, who is the purchaser of those — who is the ultimate purchaser of those bridges?

A. The general contractors, such as Bangart Brothers in St. Louis, Weber, all of the major highway contractors are purchasers. Kansas City — it's — there's, oh, generally, at each highway letting, there's at least 50 to 75 contractors bidding.

Q. Are those turnkey contractors? In other words, does the contractor bill the state? Who does the contractor bill, the State of Missouri or the Highway Department? Do you know?

A. The contractor billed it for the Highway Department.

Q. So the contract between the general contractor and the State of Missouri is a contract with the Highway Department?

A. Yes.

Q. In the steel business, do you — have you ever heard of the Becker Electric case?

[16]

A. No.

Q. Did you — have you done any — provided any steel for the State of Missouri or any of its political subdivisions where the general contractor ordered in the name of the, of the Highway Department or the city?

A. We've done, in our structural work, we've done some school project that way, where the school board pays the bills.

Q. And you don't have state or local sales tax on that, do you?

A. No. No.

Q. Why don't you do the same thing with the bridges?

A. Well, we can't do that with bridges because the state won't buy it. They're dependent on the contractor to give them

a total bid, which includes sales tax on all of the items that they purchase.

Q. So it's a decision by the State of Missouri not to buy the steel directly?

A. Yes. Now, with one exception, the State of Missouri, on the large Mississippi River and Missouri River crossing, generally they will buy that direct, take bids direct on it; and people like Stupp, who does those large jobs, will then bud the job erected.

And if you bid — if they bid that job [17] erected, those big jobs, then only have to pay sales tax on the raw material when they but it.

Q. But if the State — in those State — the State may buy the steel directly and not pay — and then there's no sales tax due, is that your testimony?

A. Yes. All state and municipalities are exempt of state, city and county taxes.

MR. KELLER: I have no further questions, your Honor.

THE COURT: Redirect.

MR. BARTLETT: I have no questions. I would simply note for the record that it's Exhibit B to the stipulation which indicates that the local sales tax for the City of St. Louis is 1.5 percent.

MR. KELLER: Ms. Talen [sic] has corrected me, too.

THE COURT: Okay. So St. Louis is, instead of 3, it's 1 and —

MR. KELLER: It's one and a half.

THE COURT: Okay. You may stand down, sir.

Thank you.

Any further evidence, folks?

MR. KELLER: No.

MS. ILES: Nothing for the State.

MR. KELLER: The Becker Electric case is a decision from the Missouri Supreme Court. You've got **[18]** enough briefs on this — since this went in effect on June 1, I planned on asking you to take the briefs that you've got. The Becker case is the only case that's not cited, indicating what Mr. DeLong testified to, that it's the choice of the State Highway Department about how they enter into this contract as to whether the local sales tax apply or not.

THE COURT: All right. We're off the record.

(Hearing adjourned.)

[Certificate omitted in printing.]

INTERVENOR'S EXHIBIT 1

Intervenor Missouri Association of Counties (the "Association of Counties") is a Missouri not-for-profit corporation which is an association representing the interests of the counties of the state. At the present time 112 Missouri counties are members of the Association of Counties. The Missouri counties which have authorized local sales taxes will receive a portion of the taxes imposed by Section 144.748, RSMo. (Supp. 1991).

INTERVENOR'S EXHIBIT 2

Intervenor Missouri Municipal League (the "Municipal League") is a benevolent corporation formed pursuant to the laws of the state of Missouri. Its members are Missouri municipalities. At the present time 540 municipalities in Missouri are members of the Municipal League. The Missouri municipalities which have authorized local sales taxes will receive a portion of the taxes imposed by Section 144.748, RSMo. (Supp. 1991).

INTERVENOR'S EXHIBIT 3

Intervenor Associated General Contractors of Missouri (the "AGC") is a benevolent corporation formed pursuant to the laws of the state of Missouri. The AGC was organized to secure cooperation among contractors and other similar business interests in the state of Missouri in matters affecting their welfare and the welfare of the people of Missouri. The members of the AGC pay state and local taxes in Missouri, including sales and use taxes, as applicable, on purchase of tangible personal property made within and without the state.

INTERVENOR'S EXHIBIT 4

Gary Markenson ("Markenson") is a citizen and resident of Jefferson City, Cole County, Missouri. He is also a payer of sales taxes and other taxes to the City of Jefferson, the County of Cole and the state of Missouri. Markenson purchases articles in

Jefferson City in intrastate commerce which are subject to local sales taxes having an aggregate tax rate of 2%.

INTERVENOR'S EXHIBIT 5

Intervenor City of Blue Springs ("Blue Springs") is a municipality located in Jackson County, Missouri. Local sales taxes have been approved and put into effect by Jackson County and Blue Springs pursuant to authorization by state law with respect to sales occurring within Blue Springs. Blue Springs has approved and put into effect a 1% sales tax for regular purposes and a .5% sales tax for transportation purposes, for a total rate of 1.5%. In addition, Jackson County has approved and put into effect for sales in Jackson County, including sales in Blue Springs, a .5% sales tax for regular purposes and a .25% sales tax for general purposes, for a total Jackson County sales tax rate of .75%. Consequently, sales made within Blue Springs are subject to a combined local sales tax rate of 2.25%. Blue Springs will receive a portion of the taxes imposed by Section 144.748, RSMo. (Supp. 1991).

[1]

* * *

DEPOSITION OF EDWARD H. ROBB, Ph.D.,

* * *

[4]

* * *

Q. State your name please.

A. Edward H. Robb.

Q. Where do you live, Dr. Robb?

A. In Columbia, Missouri.

Q. Where are you employed?

A. University of Missouri at Columbia.

Q. What school?

A. The College of Business and Public Administration.

Q. What's your position?

A. I'm the Director of the Research Center.

* * *

[26]

(EXHIBIT 5 WAS MARKED BY THE REPORTER FOR IDENTIFICATION)

Q. Exhibit 5, Deposition Exhibit 5, was Exhibit B to your affidavit?

A. Uh-huh.

* * *

[29]

* * *

Q. . . . . I get the population in Missouri at 5,217,873. Does that sound about right?

A. Uh-huh. No, actually it should be slightly less than that. We will not include the areas in Dunklin or Reynolds County. They will not be included, the areas in those counties that do not have sales taxes.

They could have been put back in, but they are the only two counties in the state that do not have a county-wide sales tax.

Q. Okay. So everybody in the state who has a zero local sales tax rate is either in Dunklin or Reynolds Counties?

A. Yes.

[30]

Q. And you don't know whether the people in those counties are in these population figures or not?

A. I know for a fact that they are not in the under 1.5 percent. We would have had to put them in.

Q. Well, I divided —

A. Let me think about that. Or did I correct that? No, they are in.

Q. So the 1,307,161, [sic] that includes —

A. It includes them.

Q. Well, if I — if I divide then 1,307,161 [sic] by 5,217,873, I get 26.58 percent of Missouri's population in areas where the local sales tax rate is less than 1.5 percent.

A. Correct.

* * *

[35]

* * *

Q. Dr. Robb, I will describe this to you as it was described to me. Ms. Iles tells me that that is the fiscal note on the bill which enacted the use tax that was the subject of this lawsuit.

Do you know what a fiscal note is?

A. Yes, I do.

Q. What is it? What is a fiscal note?

A. Well, when a piece of legislation is introduced, somebody, it may be the state agency, or it could be the oversight, I think oversight is officially responsible for generating them, will prepare a fiscal note indicating the financial impact of a particular proposed piece of legislation.

Q. Did you participate in the preparation of that fiscal note, or any of the data that's in it?

A. I don't remember having anything to do with this.

Q. Take a minute to look at it. Go ahead and look through it.

[36]

A. Okay.

Q. Now, the fiscal note, I take it, is a long document.

A. I may or may not be, depending on what is required of it.

Q. What I'm really interested in is on page 6 of 7 in this part right here.

A. Okay.

Q. That is the second part of Exhibit [H] which starts with a memorandum to Rob Nichols from DeeDee Tate. Miss Tate is the lobbyist for the Department of Revenue; correct?

A. Not any longer. She was.

Q. She was at that time?

A. She was.

Q. I am interested in what part, if any, you played in assisting in the estimate of the sales tax, or the use tax revenues on page 6 of 7 of that May 31, 1991, document.

A. I don't think we had any direct input into this, unless we — I cannot remember. The only possibility would be anticipated growth rates for sales tax receipts. I was not asked to do anything else on this, I don't think.

Q. You don't know how those numbers, Total Income All Sources, at the end of part IV — I take it that those are estimated use tax receipts, the 57 million to the $77 million?

[37]

A. Yes. Well, I guarantee that I didn't do this then. I come up with a number. I do not believe in ranges. The legislative process is uncertain enough, without giving them two numbers to choose between.

Q. Have you done any estimates of the taxes that will be collected by the local use tax?

A. No.

Q. Let's just look at this fiscal note. The maximum number for any fiscal year that they projected will be collected, at least on the fiscal note, is a maximum of a little over $81 million, and that would — that would be collected in FY '94.

A. Okay.

Q. All right. Do you see that?

A. Yes.

Q. If the tax rate is one and a half percent, in order to collect $81 million of taxes, why don't you go ahead and do it, but if you've got something you can write on, but I will represent to you that it is slightly over $5 billion of taxable sales.

A. Okay.

Q. And I got that by dividing $80 million by 1.5 percent.

A. Right.

Q. All right. The use tax — your population numbers [38] show that 26 percent of the people in this state live in jurisdictions which impose less than one and a half percent.

A. Correct.

Q. With respect to purchases by that 26 percent of the population, use taxes will be imposed on their purchases from out of state —

A. Uh-huh.

Q. — at a greater rate than their purchases from in-state?

A. That's possible.

Q. If they went to their local grocery store and bought their groceries, let's put them on the Kansas border, if they bought their groceries in Missouri, and they had a sales tax rate of less than one and a half percent, all right, let's then send them across the line into Kansas to buy groceries, their use tax rate is going to be greater than their sales tax rate, depending on where they buy those groceries.

A. That's correct. That's a possibility.

Q. What is 26 percent of $5 billion?

A. Approximately $1.2 billion, something in that range.

Q. So with respect to at least $1.2 billion or — at least potentially 1.2 billion of Missouri sales, purchases by Missourians, I'm sorry, the use tax rate would be higher [39] than the sales tax rate, the local sales tax rate, if they purchases in Missouri?

A. No, that number is unknown. We do not know — well, actually we do know several things. We know that approximately a fourth of the population lives in areas that have a combined city, county, sales tax rate of less than one and a half percent, but they have a — they represent total taxable sales of much less than that, which means that they do not shop within those jurisdictions.

Q. It means that the vendors from whom they purchase are not located in those jurisdictions?

A. That is correct.

Q. But the use tax doesn't —

A. That's right. The use tax.

Q. The use tax applies where they reside.

A. That is correct.

Q. And to whom is — let's take somebody who is in Dunklin County.

A. Okay.

Q. All right. If they drive down to Memphis to buy their suits, when they come back, they're going to pay use tax on them?

A. I don't know if they will or not.

Q. Well, they should, as a matter of law; they have a legal obligation to do that?

[40]

A. Yes.

Q. Under the statutory scheme, to whom is that use tax distributed?

A. It is going to be distributed based on the tax rates that are in effect.

Q. What amount of the use tax paid by that Dunklin County resident comes back to Dunklin County?

A. I don't know. I would have to look and see, but obviously if their rate is less than —

Q. Well, let's put that Dunklin County — there is no local county tax in Dunklin County.

A. But they could live in one of the cities that have one.

Q. All right. But the tax is distributed to the jurisdictions that impose local sales taxes?

A. Uh-huh. Right.

Q. It is not distributed to those areas of the state which impose no local sales tax; is that correct?

A. That's my understanding.

Q. So the areas of the state which impose the least, the smallest local sales tax rates, are going to benefit the least from this local use tax?

A. (Nodding head.)

Q. You're nodding yes. Is that a yes answer?

A. Yes.

[41]

Q. Do you agree with that statement?

A. Yes, based on the distribution formula.

* * *

{44]

* * *

EXAMINATION BY MR. BARTLETT:

Q. Within the figures that you've been utilizing, do you know if the motor vehicle sales taxes and the boat sales taxes are included?

A. They should be.

Q. Now, those would be imposed under the local sales tax laws at the place of residence of the purchaser; is that correct?

A. Correct.

Q. Whereas all of the other local sales taxes would be [45] imposed at the — at an office of the vendor?

A. Correct.

Q. And so if somebody lives in a rural area, say in Cole County, but they would be making their purchases — they make their purchases, say, in Jefferson City, the sales that they would be — the sales tax that would be involved there would be imposed not where they reside, but rather in Jefferson City?

A. No. The sales tax is on your place of residence.

Q. But on other sales?

A. Yes.

* * *

* * *

[1]

DEPOSITION OF RAYMOND McCARTY

* * *

[4]

* * *

Q. State your name.

A. Raymond McCarty.

Q. Where do you live?

A. Here in Jefferson City

Q. Where do you work?

A. Department of Revenue.

Q. What's your position?

A. I'm a legislative analyst II.

Q. What does that mean?

A. That means I work with the legislature. I work with fiscal notes, do fiscal notes, testify at hearings.

* * *

[12]

* * *

A. Yes. Exhibit [H] is a document that I prepared.

Q. What is that please?

A. It shows the difference in costs, in administrative costs, between implementing a local use tax at a flat rate, as opposed to imposing local use tax at a variable rate throughout the state.

Q. There is also attached to it a memorandum from DeeDee Tate to Rob Nichols. It says fiscal note 88-5A. What does that mean?

A. Right. This was the — actually I guess the sixth version of this fiscal note. They're all assigned a numerical number based on the legislative research number that's on the bill itself.

And what this represents, if you flip to the next page, is the truly agreed and finally passed version of this bill, which was House Bill 25.

[13]

Q. With respect to that, I want to turn to page 6 of 7 of the attachment to DeeDee Tate's memo.

I call your attention to the Total Income All Sources.

A. Right.

Q. Can you explain what part 4 on page 6 of 7 of the attachment to DeeDee Tate's memo does?

A. Yes. That is an estimate that we prepared that shows impact to cities and counties, and how much revenue this bill would have generated for cities and counties.

It is expressed as a range in both instances, for cities and counties. The lower end of the range, which in fiscal year '93 column here, is 35 million. That would represent what the local use tax would generate if it were imposed this date, based upon — well, with some projected increases. And that was based just on the amount of use tax that we collect now.

The upper end of the range represented an increased amount that would have been generated if a bill that was passed the year before this that required more mail order operations to register with the state.

If they actually all of them registered, based on estimates that were provided by the Advisory Commission on Intergovernmental Relations, that would be the amount that the local use tax would generate.

[14]

So the lower end of the range is a default amount, if no mail order companies signed on with the Department of Revenue. And the upper amount would represent the increase as estimated by the Advisory Commission on Intergovernmental Relations.

Q. Now, as I look at this, under part 4, cities are first?

A. Right.

Q. And the lower end of the range for them is $35 million?

A. Yes.

Q. Counties are second. The lower end of the range for them is $22 million?

A. Right.

Q. So if I add $35 million, and some $39,918,349, plus $24,014,472, does that total $57,932,821?

A. Yes, within one dollar one way or the other.

Q. And then the upper end of the range, the $47 million is added to the 29 to get 77; is that correct?

A. That's correct.

Q. Tell me how you determined the 35 million in FY '93, the 37 million in FY '94, and the annualized 35 million.

A. Okay. The annualized column — I'll do that first, because it is pretty easy to explain.

[15]

The annualized column would be the amount of impact that is experienced the first full year that a bill is in effect. And that's something that's standardized by the legislative oversight division.

These figures were computed using taxable sales that were generated on the use tax system, the use tax part of the MITS system, that were done probably in fiscal year '90, and they were projected with probably a 5 percent increase. Yes. It is a 5 percent increase. And they were based on fiscal year '89 taxable sales.

And those were the actual taxable sales that were reported from local use tax, or from use tax, consumers and vendors.

Q. Multiplied by one and a half percent?

A. Multiplied by one and a half percent.

Q. So If I wanted to find out what those sales were, I would divide $35 million by one and a half percent, and that would give me the sales?

A. The projected sales for fiscal year '93. Our responsibility is to kick them up to the years where they actually would be in effect.

Q. I understand.

A. If you wanted to find out what the taxable sales were for fiscal year '89, you could look at this worksheet, which is the

next page, and those were the total taxable [16] sales for that fiscal year.

Q. So those were the — that was from the MITS system?

A. That was from the MITS system. Those were actual taxable sales that were entered in the MITS system, in the base range.

Q. And for FY '89, those were $3,209,526,962?

A. Yes.

Q. For FY '90 — and that's July 1 to June 30, fiscal year?

A. July 1, '89 to June 30, '90. That's what we projected it would be with a 5 percent increase.

Q. And for FY '90, it was $30,370,003,310?

A. If it would have grown at 5 percent, yes.

Q. So those are projected —

A. Those are all projected numbers. The only actual figures on here is the fiscal '89 figure.

Q. Is the 5 percent increase reasonable, in your mind?

A. Up to this point it certainly was. I'm not sure that state revenues have quite grown at 5 percent since that time, but up until that point, they had grown at 5 percent historically over the last ten years.

Q. And that was a percentage rate that was generally used in making estimates by your office?

A. Yes.

Q. To the General Assembly?

* * *

[17]

* * *

Q. Ms. Iles also brought in what's been marked as Exhibit 8, and said that you could answer questions about it.

What it that?

A. This is a sample sales tax return. It is actually a sales tax return. That's the reason for the markings on there is to block out the confidential information.

This is an example of a company that does business in all areas of the state. And when we have a company like that, we have to register them for every city and every county in the state.

The counties have to be represented separately for unincorporated areas that the taxpayer may do business in. And as a result, we have in this particular case a 53-page return.

* * *

[18]

* * *

Q. So this company has at least 444 sites?

A. At least. I think it actually has eight hundred and some.

* * *

[24]

Q. What do you do with the hundreds of thousands of individual use tax returns you receive every year from Missouri citizens?

A. Well, those are not identified from — those aren't identified by location, because there is no need at this time to keep track of where those purchases were made from.

If it is a vendor selling into the state, they do have the part on their returns, usually — I didn't bring a use tax return, I don't believe. It may be here.

Q. No, it is not.

A. A use tax return is split into two parts. There is an upper part that looks identical to the sales tax return. There is a lower part that is just one line, and that's for consumers' use tax purposes. It has no location identification to it at all. It is just one blank and one rate.

Q. And that's where all the individuals would put their taxable — that's where they put their purchases?

A. Right. But out of state vendors selling into the state could have different locations that are selling into the state. The only reason that those are monitored now is for auditing purposes.

* * *

[Examination by Mr. Bartlett]

[25]

* * *

Q. And for what purpose was Exhibit A made?

A. Exhibit A was run during the course of the passage of House bill 25.

The Director at that time, Duane Benton, had asked the Information Systems Division to generate a report to show taxable sales at different rated, and how many taxable sales were at each rate, and that what that report represents.

Q. And that was at Mr. Benton's direction?

A. Yes, that was at Mr. Benton's request.

Q. And was that provided for the legislature?

[26]

A. The information from it was provided to the legislature. Mr. Benton testified in a hearing that there were —

MR. KELLER: Objection as to Mr. Benton's testimony at the hearing. That's hearsay.

BY MR. BARTLETT:

Q. You can go ahead and answer.

A. Oh, okay. There were 92 percent, I believe, of the taxable sales fell at or above the one and a half percent local tax, and there were 8 percent of the taxable sales that were below the one and a half percent local tax rate.

Q. So this data was available at the time, to the legislature, at the time of the passage?

A. It was available.

* * *

DEPOSITION EXHIBIT A

MISSOURI DEPARTMENT OF REVENUE
INFORMATION SYSTEMS BUREAU
SALES TAXES (TAXABLE SALES)
TOTALS FOR 3RD QUARTER 1990 BY ACCUMULATIVE RATE

CITY	COUNTY	ACCUMULATIVE RATE	*= JUL THRU SEP =* AMOUNT	ACCUM PERCENTAGE RATE TOTAL/ QTR TOTAL
Excelsior Springs	Ray	.07225	546,209.28	
Total by Rate =			546,209.28	0.01%
Elsberry	Lincoln	.07225	2,116,635.85	
Festus	Jefferson	.07225	29,452,271.61	
Kimmswick	Jefferson	.07225	620,600.58	
Lamar	Barton	.07225	7,602,240.19	
Moscow Mills	Lincoln	.07225	1,827,617.08	
Orrick	Ray	.07225	496,409.10	
St. Robert	Pulaski	.07225	13,630,448.27	
Troy	Lincoln	.07225	16,259,650.32	

Winfield	Lincoln	.07225	6,150,304.37	
	Total by Rate =		78,156,177.37	0.85%
Excelsior Springs	Clay	.06975	18,585,252.02	
Glasgow	Chariton	.06975	189,851.54	
Glasgow	Howard	.06975	1,682,431.85	
Nixa	Christian	.06975	5,821,022.28	
Old Monroe	Lincoln	.06975	941,586.33	
Owensville	Gasconade	.06975	7,927,990.31	
	Total by Rate =		35,148,134.33	0.38%
Carterville	Jasper	.06850	571,926.29	
	Total by Rate =		571,926.29	0.01%
Arnold	Jefferson	.06725	40,854,385.90	
	[Names of additional municipalities in which the same "Accumulative Rate" is applicable are omitted in printing.]			
	Total by Rate =		649,940,690.07	7.10%
Canton	Lewis	.06600	2,793,407.09	
	[Names of additional municipalities in which the same "Accumulative Rate" is applicable are omitted in printing.]			

	Total by Rate =		5,404,592.78	0.06%
Billings	Christian	.06475	688,933.38	
	[Names of additional municipalities in which the same "Accumulative Rate" is applicable are omitted in printing.]			
	Total by Rate =		1,826,949,717.41	19.96%
Airport Drive	Jasper	.06350	1,371,229.39	
	[Names of additional municipalities in which the same "Accumulative Rate" is applicable are omitted in printing.]			
	Total by Rate =		163,085,315.74	1.78%
Alexandria	Clark	.06225	369,272.31	
	[Names of additional municipalities in which the same "Accumulative Rate" is applicable are omitted in printing.]			
	Total by Rate =		1,155,171,732.43	12.62%
Gallatin	Daviess	.06100	2,865,636.16	
	[Names of additional municipalities in which the same "Accumulative Rate" is applicable are omitted in printing.]			

	Total by Rate =		33,312,842.27	0.36%
Ashland	Boone	.05975	3,314,617.85	

[Names of additional municipalities in which the same "Accumulative Rate" is applicable are omitted in printing.]

	Total by Rate =		899,261,373.23	9.82%
Bethany	Harrison	.05850	8,430,560.73	

[Names of additional municipalities in which the same "Accumulative Rate" is applicable are omitted in printing.]

	Total by Rate =		14,198,470.36	0.16%
	Andrew	.05725	2,844,004.31	

[Names of additional counties, unincorporated areas and municipalities in which the same "Accumulative Rate" is applied are omitted in printing.]

	Total by Rate =		3,555,320,700.56	38.84%
	Lewis	.05600	1,532,968,99	

[Names of additional counties, unincorporated areas and municipalities in which the same "Accumulative Rate" is applied are omitted in printing.]

	Total by Rate =		46,722,462.94	0.51%
	Christian	.05475	8,199,448.28	

[Names of municipalities in Christian County in which the same "Accumulative Rate" is applied are omitted in printing.]

	Total by Rate =		8,528,221.93	0.09%
	Audrain	.05225	2,814,348.08	

[Names of additional counties, unincorporated areas and municipalities in which the same "Accumulative Rate" is applied are omitted in printing.]

	Total by Rate =		257,546,619.36	2.81%
Arbyrd	Dunklin	.05100	349,605.69	
Hornersville	Dunklin	.05100	256,155.72	
Kennett	Dunklin	.05100	18,890,576.32	
	Total by Rate =		19,496,337.73	0.21%
	Boone	.4975	17,017,047.07	

[Names of additional counties, unincorporated areas and municipalities in which the same "Accumulative Rate" is applied are omitted in printing.]

Total by Rate =		55,837,733.71	0.61%
Jasper	.4850	11,929,426.81	

[Names of municipalities in Jasper County in which the same "Accumulative Rate" is applied are omitted in printing.]

Total by Rate =		13,073,192.05	0.14%
Adair	.04725	2,224,298.12	

[Names of additional counties, unincorporated areas and municipalities in which the same "Accumulative Rate" is applied are omitted in printing.]

Total by Rate =		288,961,922.95	3.16%
Newton	.04600	9,997,641.60	

[Names of municipalities in Newton County in which the same "Accumulative Rate" is applied are omitted in printing.]

Total by Rate =		10,767,693.61	0.12%
Dunklin	.04225	2,502,783.78	

[Names of municipalities in Dunklin County or Reynolds County in which the same "Accumulative Rate" is applied are omitted in printing.]

Total by Rate =		36,561,706.77	0.40%
Quarter Total =		9,154,563,773.77	100.0%

MISSOURI DEPARTMENT OF REVENUE
INFORMATION SYSTEMS BUREAU
SALES TAXES (TAXABLE SALES)
CALENDAR YEAR 1990 - CALC USING 9206 TAX RATE

CITY	COUNTY	ACCUM LOCAL RATE	*= JAN THRU DEC =* TOTAL AMOUNT	LOCAL AMOUNT (RATE * TOT)
Excelsior Springs	Ray	.03500	1,813,583.33	63,475.42
	Total by Rate =		1,813,583.33	63,475.42
Glasgow	Howard	.03250	6,285,616.96	204,282.55
	Total by Rate =		6,285,616.96	204,282.55
Elsberry	Lincoln	.03000	8,059,172.37	241,775.17
	[Names of additional municipalities in which the same "Accumulative Rate" is applicable are omitted in printing.]			
	Total by Rate =		1,008.908,940.05	30,267,268.21
Crystal City	Jefferson	.02750	60,755,141.26	1,670,766.38
	[Names of additional municipalities in which the same "Accumulative Rate" is applicable are omitted in printing.]			

	Total by Rate =		203,094,659.79	5,585,103.15
Carterville	Jasper	.02625	2,219,764.04	58,268.81
	Total by Rate =		2,219,764.04	58,268.81
Arnold	Jefferson	.02500	166,342,105.93	4,158,552.65
	[Names of additional municipalities in which the same "Accumulative Rate" is applicable are omitted in printing.]			
	Total by Rate =		3,001,802,070.82	75,045,051.80
Canton	Lewis	.02375	10,469,660.94	248,654.45
	[Names of additional municipalities in which the same "Accumulative Rate" is applicable are omitted in printing.]			
	Total by Rate =		77,498,922.64	1,840,599.41
Anderson	McDonald	.02250	9,664,592.48	217,453.33
	[Names of additional municipalities in which the same "Accumulative Rate" is applicable are omitted in printing.]			
	Total by Rate =		6,412,809,192.85	144,288,206.87
Airport Drive	Jasper	.02125	5,279,436.83	112,188.03

[Names of municipalities in Jasper County in which the same "Accumulative Rate" is applied are omitted in printing.]

	Total by Rate =		652,783,252.70	13,871,644.12
Alexandria	Clark	.02000	1,220,053.95	24,401.08

[Names of additional municipalities in which the same "Accumulative Rate" is applicable are omitted in printing.]

	Total by Rate =		3,984,839,426.56	79,696,788.57
Diamond	Newton	.01875	2,121,918.13	39,785.96

[Names of additional municipalities in which the same "Accumulative Rate" is applicable are omitted in printing.]

	Total by Rate =		77,695,673.40	1,456,793.866
Birmingham	Clay	.01750	283,654.10	4,963.95

[Names of additional municipalities in which the same "Accumulative Rate" is applicable are omitted in printing.]

	Total by Rate =		3,516,048,173.82	61,530,843.05
Bethany	Harrison	.01625	33,691,785.62	547,491.52

[Names of additional municipalities in which the same "Accumulative Rate" is applicable are omitted in printing.]

	Total by Rate =		70,437,609.30	1,144,611.16
Andrew		.01500	10,180,391.12	152,705.87

[Names of additional counties, unincorporated areas and municipalities in which the same "Accumulative Rate" is applied are omitted in printing.]

	Total by Rate =		14,199,531,525.19	212,992,972.89
Lewis		.01375	5,510,895.96	75,774.82

[Names of additional counties, unincorporated areas and municipalities in which the same "Accumulative Rate" is applied are omitted in printing.]

	Total by Rate =		173,555,629.25	2,386,389.90
Christian		.01250	32,192,708.09	402,408.85

[Names of municipalities in Christian County or Scotland County in which the same "Accumulative Rate" is applied are omitted in printing.]

Total by Rate =		36,298,145.31	453,726.83
Audrain	.01000	10,941,245.94	109,412.46

[Names of additional counties, unincorporated areas and municipalities in which the same "Accumulative Rate" is applied are omitted in printing.]

Total by Rate =		748,973,046.30	7,489,730.46
Newton	.00875	38,656,000.80	338,240.01

[Names of municipalities in Newton County or Dunklin County in which the same "Accumulative Rate" is applied are omitted in printing.]

Total by Rate =		118,811,654.59	1,039,601.97
Clay	.00750	28,377,326.66	212,829.95

[Names of additional counties, unincorporated areas and municipalities in which the same "Accumulative Rate" is applied are omitted in printing.]

Total by Rate =		160,503,900.00	1,203,779.26

Jasper	.00625	42,243,369.58	264,021.06

[Names of municipalities in Jasper County in which the same "Accumulative Rate" is applied are omitted in printing.]

Total by Rate =		46,555,547.90	290,972.18
Adair	.00500	8,883,439.11	44,417.20

[Names of additional counties, unincorporated areas and municipalities in which the same "Accumulative Rate" is applied are omitted in printing.]

Total by Rate =		991,931,407.96	4,959,657.08
Dunklin	.00000	9,640,975.28	0.00
Reynolds	.00000	6,410,688.71	0.00

[Names of municipalities in Dunklin County or Reynolds County in which the same "Accumulative Rate" is applied are omitted in printing.]

Total by Rate =		171,001,104.96	0.00
Year Total =		35,663,398,847.72	645,869,767.55